SUPREME COURT, [illegible] COUNTY, N.Y.

The People of the State of New York,	
against	
Charles Frederick Stielow,	

Testimony of
Albert V. Hamilton.

1 I n d e x

2 Albert H. Hamilton Direct ex. 1 Cross ex. 115

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

SUPREME COURT OF THE STATE OF NEW YORK
JUSTICES' CHAMBERS
BUFFALO, N.Y.

B u f f a l o, April 22d, 1923.

Mr. Harold P. Williams,
District-Attorney's Office,
Dedham, Mass.

Dear Sir:-

Pursuant to the request of Mr. C. E. Waite of Syracuse, New York, I have made five copies of the testimony of Mr. Albert H. Hamilton, who was sworn as a witness for the People in the trial of an indictment for murder in the first degree against Charles F. Stielow, at Albion, Orleans County, N.Y., and mailed you the original or ribbon copy Saturday night and the other four copies were sent by express Sunday. I have no doubt these copies will reach you in due time for use.

Herewith send you bill for the same, with a duplicate of the original.

I did not ask Mr. Waite how the bill should be made out, and if it is not in proper shape kindly return them, with instructions what to do.

Very truly yours,

M. F. Keusley

416 Parkside avenue.

B U F F A L O, April 22d, 1923.

Mr. H a r o l d P. W i l l i a m s,
District-Attorney's Office,
D e d h a m, Norfolk County,
Massachusetts.

(Duplicate)

To M a r k F. B e n s l e y,
416 Parkside avenue,
Buffalo, New York, Dr

To furnishing five copies of the testimony of A l b e r t H. H a m i l t o n, sworn as a witness in the case of The People of the State of New York against Charles F. Stielow,

1 copy 360 folios at 20¢	$ 72.00
1 " " " " 10¢	36.00
1 " " " " "	36.00
1 " " " " "	36.00
1 " " " " "	36.00
Total	$216.00

State of New York:
City of Buffalo : ss
County of Erie. :

M a r k F. B e n s l e y, being duly sworn, deposes and says: That he is one of the Official Stenographers of the Supreme Court, Eighth Judicial District, State of New York; that the foregoing account is just and true; that the services therein specified were actually performed, and they are of the value therein charged; that no part of the same has been paid, and there are no offsets thereto, and the said bill is now due and owing as therein charged, in the sum of Two Hundred and Sixteen Dollars----------$216.00

Subscribed and sworn to before me Mark F. Bensley
this 23d day of A p r i l, 1923.

Russell B. Clark
Notary Public in and for
Erie County, New York.

(Duplicate)

Mutual Life Insurance Company,
Massachusetts.

Mr. Samuel J. Hanson,
415 Terrace avenue,
Buffalo, New York.

To Surrendering from policies of the Company of
Albert N. Williamson
witness in the name of the People of the State
of New York against Samuel T. Stelzer.

1 copy 3M0 Policies at $50	$ 75.00
1 " " " " 10M	36.00
1 " " " " "	86.00
1 " " " " "	20.00
1 " " " " "	26.00
Total	$243.00

State of New York:
City of Buffalo : ss
County of Erie. :

Karl T. Schaefer, being duly sworn,
deposes and says: that he is one of the official stenogra-
phers of the Supreme Court, Eighth Judicial District, State of
New York; that the foregoing account is just and true; that
the services therein specified were actually performed, and
they are of the value therein charged; that no part of the
same has been paid, and there are no offsets thereto, and the
sum so it is now due and owing as therein stated, in the sum
of Two Hundred and Sixty-three Dollars----------$263.00

Subscribed and sworn to before me Karl T. Schaefer

this 7th day of April 1921.

Raymond Gallant
Notary Public in and for
Erie County, New York.

1 [illegible] [illegible],[illegible] COUNTY,N.Y.

The People of the State of New York, against Charles Frederick Wielm.	Indicted for Murder in the first degree.

6

7 Tried at Albion,N.Y.,beginning July 13th,1915,

8 before Hon. Cuthbert W. Pound,Justice,and a

9 jury.

10 A P P E A R A N C E S:-

11 John C. Calpurto-Ker,District-Attorney,for

12 the People.

13 H. A. D l a k e,of Counsel.

14 D a v i d A. W h i t e,for Defendant.

15 Milton H. Hudson and John D. Cluto,of Counsel.

16 x x x x x x x

17

18 A L B E R T G. H a m i l t o n,sworn for the People.

19 DIRECT EXAMINATION BY MR. [illegible]:-

20

21 Q. Mr. Hamilton,where do you reside ?

22 A. Auburn,N.Y.

23 Q. And what is your profession or business ?

1 A Analytical chemist, microscopist, scientific investigator.
2 Q What is your age ?
3 A 44.
4 Q How many years experience have you had in the branches
5 that you have indicated ?
6 A Thirty.
7 MR. WHITE:-I object to the question and ask to have
8 the answer stricken out.
9 (QUESTION READ BY THE STENOGRAPHER)
10 MR. WHITE:-I did not hear the last part of the
11 question.
12 THE COURT:-Are you satisfied with the question ?
13 MR. WHITE:-I think so.
14 THE COURT:-All right.
15 Q Have you made a study of those subjects specially ?
16 A Yes sir. I have given special study and preparation to
17 those subjects.
18 Q During all this time ?
19 A Yes sir.
20 Q And have you had any experience upon those subjects as
21 a witness in court ?
22 A I have.
23 MR. WHITE:-I object to the question as incompetent,

irrelevant and immaterial. The witness stated he was a scientific investigator and microscopist and something else here, and to my notion those are entirely indefinite terms, and the question and the answer do not amount to anything.

THE COURT:-You have qualified him yourself in examining the jurors. You have referred to him one hundred and twelve times as an expert witness, or a professional witness. You will ultimately want to say that is what he is.

MR. WHITE:-I believe I characterized him as an all-around professional witness.

THE COURT:-That is exactly what you did. Objection overruled.

MR. WHITE:-An exception.

(Question read by the stenographer)

A I have from Maine to California.

Q On these different subjects you mean ?

A yes sir, throughout the United States.

Q As an expert on these subjects you have mentioned ?

A In one or more of the subjects mentioned in the United States Federal Circuit Courts, State, Supreme, County, Private and Magistrate Courts.

Q. How much of your time have you given or devoted to expert work in those branches ?

A. My entire time is now given to this work and has been for several years.

Q. Last past ?

A. Yes sir.

Q. About how many cases have you been called in as expert witness in on the different branches that you speak of ?

A. In homicide cases it is ninety-two, but in lesser criminal matters and civil matters it is a matter of several hundred. I cannot give the exact number.

Q. What are the three subjects that you said you had given special study and attention to ?

A. Analytical chemist.

Q. What is an analytical chemist ?

A. An analytical chemist is one who has submitted to him an unknown substance and by the use of chemicals he determines---

MR. WHITE:-I ask to have the answer stricken out, and I object to the question upon the ground that the witness has not been qualified to state what an analytical chemist is.

THE WITNESS:-That is what he is stating now.

1 MR. WHITE:-I make the point he has not been quali-
2 fied as it appears he is able to state.
3 THE COURT:-Is he to testify here as an analytical
4 chemist ?
5 MR. [illegible]:-In some subjects.
6 THE COURT:-All right.
7 MR. [illegible]:-Not at the present time.
8 THE COURT:-In this case ?
9 MR. [illegible]:-I expect him to.
10 THE COURT:-Then qualify him as such. Not as to giv-
11 ing evidence,but as to having studied or taken a
12 degree.
13 Q What is your experience as an analytical chemist ?
14 In connection with the courts and out of the courts,
15 that is both criminal and civil.
16 THE COURT:-
17 Q -efore you got into court you had some schooling and
18 training,of course,in analytical chemistry,or else you would
19 not have been of any use in court. So want to know what
20 your professional training has been,where you learned to
21 be one and what experiences you have had in that regard
22 outside of court ?
23 Q First in the common school I studied chemistry. Second,

had private tutoring by a chemical instructor. Third, taking an analytical chemical course in the Department of Pharmacy, Chemistry and Microscopic, in the college or in the Department of Pharmacy in the Columbia University of New York City, from which I graduated.

Q. With a degree ?

A. With a degree in 1885.

Q. With a degree of what ?

A. Degree of Pharmacy. Since then I have pursued special studies continuously since 1885, and practical studies in chemical work of analyzing substances, including blood stains, gun powder and smoke, or smoke deposits, gun powder and various other subjects. I have given special study and experimentation to the analysis of suspected stains and suspected blood stains as to whether they were or not blood stains, or whether or not the stains contained blood in the normal or abnormal condition. I have analyzed many times the interior deposit of rifle and revolver barrels.

MR. WHITE:-If the Court please, I ask to have the last part of the witness's answer stricken out, on the ground that it is not a statement of any training he has had and does not tend to qualify him, and not a statement of any training, or educa-

tion,or instruction,but merely a statement of his attempts.

THE COURT:-In a sense let us not spend too much time over that. He has given his preliminary training and more too. If you want it stricken out I will strike it out at the present. It will ultimately get in,of course,in order to ans other question. Strike it out for the present. You been a an analytical chemist when you completed your education,of course,and the rest is experience and not training.

A Right.

MR. FITZGERALD:-(Continuing)

Q Since you studied and received your education in the branch that you have indicated you have had actual experience in it ?

A I have had actual experience both in the analyzing of substances,and also in connection with the conducting of a retail drug store when I practiced actively over a period of years.

Q You have had experience in analyzing different substances?

A Yes sir.

Q What substances ?

1 A At one period I was consult to the Board of Health of the
2 City of Auburn, and in the analyzing of substances relative
3 to ammunition and gun powder. I conducted many in the
4 case of the People against Frank Sheldon, a murder trial.
5 I had several years similar experiments and analyses
6 were made in the murder cases of Big Head Kelly Schultz,
7 and three more cases tried in Rochester many chemical
8 experiments were made by me, many of them testified to
9 in the case of the People against George Haines, a murder
10 case at Salarium, New York, and to you want a list of these
11 cases ?
12 Q I was trying to get your qualifications is all.
13 A In the matter of the analysis of blood stains, one recent-
14 ly concluded at Utica.
15 MR. WHITE:-I do not think we want just now to have
16 you recount all those cases. If Mr. White on
17 cross-examination goes into them all right.
18 MR. WHITE:-
19 Q But you know how to analyze substances for the purpose of
20 detecting human blood? You know how to do it ?
21 A Put as your question is put.
22 Q Answer it any way you will to. You know what I mean? You
23 know how to detect ?

1 Q Proof ?

2 A Yes.

3 Q Yes, and whether it is consistent with known human blood.

4 A With what ?

5 A Whether the supposed stain is consistent with known human

6 blood and inconsistent with the blood of other sources.

7 Q You have been so in that ?

8 A Yes sir.

9 Q And you have done it ?

10 A I have a good many times.

11 THE COURT:-Go ahead with your examination, your

12 powder marks, or whatever they are. Let him if he

13 knows how to do those things.

14 MR. [illegible]:-(Resuming)

15 Q Do you know how to analyze and examine powder marks ?

16 A I do.

17 Q And deposits ?

18 A Yes sir, and have done it many times.

19 Q And ammunition ?

20 A Yes sir.

21 Q And are you familiar with the making and the construction

22 of bullets and cartridges ?

23 A In the manufacture of cartridges I am familiar and have

visited the cartridge factories and have followed the pro-

1 ons from the crude metal and the crude ingredients
2 at the powder mills to the finished product as shipped
3 onto the market.
4 Q What was the other subject you said you had studied ?
5 A The use of the microscope in using my——
6 MR. WHITE:-I object to the answer and ask to have
7 it stricken out. The witness does not appear to
8 be qualified on the subject.
9 THE COURT:-Strike it out. State first what training
10 and education you have had in the use of a micro-
11 scope.
12 A My first training and use of the microscope began in
13 1879 and was perfected in the New York College of Pharmacy.
14 It was finished so far as preliminary education was con-
15 cerned in the New York College of Pharmacy.
16 Q You had a course of instructions in the use of the micro-
17 scope there ?
18 A Yes sir, and have perfected the use of it and application
19 of it since that graduation by practical use of the
20 microscope in investigations.
21 THE COURT:-Is that all you want on that subject ?
22 MR. [illegible]:-What subject is that ?
23 THE COURT:-Scientific investigation. Go better

finish the testimony as to the subject of the training and experience he has had.

[illegible]-(CONTINUED)

Q What do you mean by scientific investigation ?

A Scientific investigation is taking a quantity of evidence and things gathered in in connection with some crime or prosecution,sitting down and with the use of chemicals when necessary and the microscope when necessary,examining each article and determining of what minute things or facts that each article reveals under such an examination.

THE CHIEF:-

Q You do that in part by the use of analytical chemistry and by the use of the microscope ?

A Yes sir.

Q As bearing on this particular case I suppose that would include the investigation as to whether a certain bullet was fired out of a certain revolver,would it not ?

A Right.

Q And in a case of that kind,of course,you have something besides analytical chemistry and microscopic,I suppose? You can tell us that it is and what your training and experience has been in that line. Let us know as briefly as possible

1 what your special training and experience has been along
2 this line in this case ?
3 A In determining, to illustrate, whether a given bullet goes
1 through a given gun, or whether---
5 MR. WHITE:-I object to the answer and ask to have
6 it stricken out. I think the witness should be
7 confined to stating what his train and experience
8 has been.
9 THE COURT:-I think that is what he is undertaking
10 to do. That is what I want him to do, what training
11 and experience he has had which would enable him
12 to speak with any degree of authority on that ques-
13 tion as to whether a certain bullet went through
14 a certain gun.
15 A Consists in first a careful examination without alteration
16 of the bullet itself, as to the things upon it that show,
17 what factory made it, the things upon it that show what
18 kind of powder fired it, the things upon it that show an
19 approximation of the age that the bullet has been manufact-
20 ured and the things upon it that show what kind of a car-
21 tridge it was fired from, and the relations that exist---
22 MR. WHITE:-I submit this is not a statement of his
23 training or experience.

THE COURT:-No,it is not. However he has not completed his answer.

MR. WHITE:-I move to strike it out.

THE COURT:-We will let it stand for the present.

MR. WHITE:-An exception.

THE COURT:-

Q What we want to know,Mr. Hamilton,to get it concisely, as the training you have had and who has showed you those things,and then after you have told us where you learned to make this kind of an investigation you can tell us what experiences you have had as to what you did,you may be asked with regard to what you did in this case and then you can tell us that.

A I got my training by visiting the revolver,rifle and shot gun factories,some of them,observing the machines that produced the weapons,the manner of their working,and following with detail through the factory the process in producing a revolver,visiting the powder mills and following in detail the manufacturing of powder; visiting personally the fulminate works and the manufacture of the fulminate and the little time cap on centre fire ammunition, and so forth.

Q Wouldn't it be safe to say this in that regard,that your

1 training has come from the examination of weapons, ammu-
2 nition and everything pertaining to fire arms ?
3 A That is right.
4 Mr. BLACK:-
5 Q And the making of experiments ?
6 A Yes, I have conducted in connection with this---
7 Mr. WHITE:-
8 Q Are you speaking now from anybody's suggestion at all
9 or is it purely voluntary ?
10 A I was completing my last answer.
11 THE COURT:-You haven't the witness and if you have
12 any objection to make to anything he says address
13 it to the Court and not to the witness.
14 A Taken in connection with these is the various---
15 Mr. WHITE:-It is my understanding there is not any
16 question at all.
17 THE COURT:-I do not know of any.
18 Mr. [illegible]:-[illegible]
19 Q Have you made any special study of arms and guns and
20 revolvers, the make-up and calibre of their properties ?
21 A May I have that read, please ?
22 (Question read by the stenographer)
23 A I have.

1 MR. WITTE:-I object to it on the ground he has been
2 all over it and answered it once.
3 [illegible]
4 [illegible]
5 THE COURT:-Let the answer stand.
6 MR. WITTE:-As [illegible].
7 Q What is it,what has it been ?
8 A I have made one hundred or more microscopical examinations
9 of the interior of barrels,and especially at the muzzle
10 end,and similar examinations before and after firing bul-
11 lets from given guns,and an examination of the bullets
12 fired from revolvers after catching them in proper re-
13 ceptacles,for the purpose of observing them and the mark-
14 ings that a given gun produces upon the bullet fired
15 through it,and how they differ between gun and gun.
16 Q And also as to the calibre ?
17 A That covers various calibres in my experience.
18 Q Have you ever given any special study to the subject of
19 death by gun and pistols ?
20 A Yes sir,I have had much experience upon that.
21 Q What special study ?
22 A One of my first studies was a study---
23 THE COURT:-Q You mean as to the cause of death ?

1 A Yes sir.

2 THE COURT:-There is no doubt this man came to his
3 death as the result of gunshot wounds. I suppose
4 there will be no suggestion he did not so you can
5 leave that out without any prejudice to this case.

6 MR. WHITEHOUSE:-(Continue)

7 Q What special study have you given to the subject of death
8 by gunshot wounds to ascertain the particular kind of gun
9 or powder or cartridge used in such wounds ?

10 A One of the studies has been a taking part in autopsies
11 as an assistant in the operating room,and assisting
12 at the autopsy and following up sections removed from the
13 surfaces at the point of entrance of the human body;
14 examinations,microscopic and chemical,of the interior
15 along the track of the bullet and at the point of lodg-
16 ment,and the organs through which the bullets passed,and
17 an observation of results of the passage of the bullet.
18 Then there are other things besides that I have studied.

19 Q That you have studied ?

20 A That I have studied in connection with that, if I under-
21 stand the bearings of your question. Then I have conduct-
22 ed myself hundreds of experiments by shooting with various
23 calibres of revolvers and ammunition into human bodies

and making similar examinations of the exterior and interior results, including the products embedded or passed into the wounds of these bodies.

Q And on examination of the deposits around the wound ?

A Around the wound, both exterior and interior, a wound upon the head immediately under the scalp, upon the skull and in the brain, in fact the entire track of the bullet.

Q That special study have you given firearms and ammunitions ? Have you told that ?

A I have not.

MR. WHITE:-I think he has.

THE WITNESS:-He says he has not. He is the witness.

MR. WHITE:-I object to it on the ground he has been over it.

QUESTION OVERRULED.

EXCEPTION ALLOWED.

A I have first collected over a period of years little over 20,000 cartridges of the various calibre, short, extra short, long, and so forth, beginning before the Civil War down to modern times for comparative purposes of identification of a given bullet, both the ammunition made in the various factories of the United States and Canada, and some English and some German manufactures at least that are sold large-

1 ly in this country, and have compared innumerable times a
2 given bullet found in a crime with my apparatus so
3 to identify the bullet, or identify whether a given bullet
4 is or is not of a known manufacture. And then I have also
5 made a study of these bullets, of the stock, as to how it
6 differed between smokeless, semi-smokeless and a black gun
7 powder. I mean by that a saltpeter sulphur gun powder,
8 and how the bullets themselves differ, the same manufacture,
9 over different periods of time, and how the bullets differ
10 as between the different factories.
11 Q The manufacturers you mean ?
12 A Yes sir.
13 Q Have you given any special study and attention to blood
14 stains and their indentification ?
15 A I believe I have covered that already.
16 MR. WHITE:-That is objected to as been all over.
17 Q You have answered that ?
18 A I have done so.
19 Q To what extent are you able to detect human blood stains
20 from those of other sources ?
21 MR. WHITE:-That is objected to as incompetent, ir-
22 relevant and immaterial.
23 You may answer.

1 MR. WITTE:-Interruption.

2 A. I am able to detect first chemically whether a supposed
3 stain contains blood; second, in many cases, not in all
4 cases, whether that blood is consistent with known human
5 blood and inconsistent with other bloods but human blood.
6 I know of no process whereby I can determine definitely
7 that a given stain is actually human blood. I can only
8 determine, as I say, that it is like known human blood.
9 Q. You were called to Albion sometime subsequent by us, were
10 you not, in this case ?
11 A. Yes sir.
12 Q. When first ?
13 A. May 1st, 1910.
14 Q. Was that the day that you came here ?
15 A. I think so, in the morning.
16 Q. And you recall that certain bullets, a revolver and stick
17 were shown to you ?
18 A. They were.
19 Q. Who had possession of them at that time ?
20 A. The sheriff, Mr. Bartlett, I think.
21 Q. And where were they when they were shown to you ?
22 A. The entire outfit was shown me in a room on the second
23 floor of the jail. The room right over the office.

Q And who were there with you ?

A The sheriff and one of his deputies,I think Mr.---

Q Porter ?

A They called him Scotty.

Q Mr. Porter ?

A Yes sir. And I think Mr.,the District-Attorney,was there a part of the time,I am not sure about all the time,and Charles Dexter,a gentleman sitting over there,and I am not sure whether a Mr. George Newton was in there or not. I think he came in and went out. Im speaking now of the first time.

Q Did you make an examination of those bullets and revolver ?

A At that time I refused to examine the bullets and revolver, or the bullets. I examined the revolver and I refused to examine the bullets at that time.

Q Why ?

MR. SMITH:-I object to it as incompetent and irrelevant and immaterial. I ask to have the answer stricken out as incompetent,irrelevant and immaterial,his refusal.

MR. [illegible]:-There were certain reasons for it. I am going to show they were taken up just as

1 Sheriff Bartlett---

2 MR. WITT:-I object to the District-Attorney

3 stating the reasons.

4 MR. [illegible]:-At that time they were merely

5 put in these boxes by---

6 THE COURT:-So may answer if that is all it is

7 offered for. That is merely historical,that is

8 all.

9 MR. WITT:-Exception.

10 A At that time I refused to examine them until they had the

11 [illegible] containing--that is the envelope--containing

12 something which I did not know,were taken; that is,they

13 were alleged to be ballots in the envelope and I refused

14 until they were taken by the Sheriff to the grand,how-

15 ever it might be,that put them in those envelopes,and was

16 in my presence removed from the envelope the ballots

17 and put his mark of identification on them,before I could

18 touch them. Then taken by the Sheriff and some

19 others I do not recall to the office of Mr. Emerson.

20 Q Shelby Centre ?

21 A I dont know where it was,and I simply saw his sign on

22 the door.

23 Q The man that was on the stand here ?

A Yes sir. We,in the presence of the sheriff and my self and the others,opened these envelopes one at a time and marked on"E",as I recall it,upon each of the bullets taken fr n these envelopes,and then placed them in the pasteboard ali b boxes that I had previously prepared with cotton,and he then marked each of these boxes,I think, with the same inscription that was upon the original envelope following which they were brought back by the sheriff to this seat room and then I made my examination of the bullets.

Q That was the same day ?

A Yes sir. Charles Newton and myself made the examination.

THE COURT:-

Q What date was that ?

A The same date.

Q May 1st ?

A May 1st,yes sir.

MR. KNICKERBOCKER:-(HANDING)

Q I show you exhibit"G" and exhibit"H" and exhibit"M", and did you observe Dr. Mckerson write anything on the boxes there in your presence ?

A I did,yes sir.

Q It was written in your presence,was it ?

1 A Yes sir. He wrote what is upon these boxes,"BB,"[illegible]"
2 and"CC",in my presence,and I am not sure,but as I rec-
3 ollect it,he copied this from the envelope from which he
4 had removed the bullets. The envelopes are inside now.
5 There is the envelope right there in"BB" that he took the
6 bullet from,which has on it"Exhibit C,March 26-5".
7 That is the envelope he took the bullet from and trans-
8 ferred it to this [illegible] box and placed this envelope
9 back in the box. The whole thing is there.
10 Q Now I want to find out is,after he took the bullets out
11 of the envelopes and put them in these boxes as you have
12 described,did he turn these boxes then over to the sheriff
13 in your presence ?
14 A He did,right back right then and there.
15 Q And one box,as you recollect it,contained what ?
16 A One box contained the bullet taken from the body of Marga-
17 ret Scholett and one box contained the bullet taken from
18 the chest of Charles Phelps,and the third contained the
19 bullet in two pieces taken from the skull of Charles
20 Phelps.
21 THE COURT:-
22 Q That is,you mean by that they were so described to you ?
23 A Yes sir.

1 Q You dont know where they came from ?

2 A I know nothing about that,no sir.

3 MR. FULTON:-(Marked)

4 Q And did they have exhibit"PP"there ?

5 A Not then,no sir.

6 Q Where did you see that ?

7 A I saw"PP"bullet removed by this physician,Dr .Hogan,at--or

8 I saw it removed from a human body at the Fort Shelby

9 burying ground. I was looking for the date.

10 Q The 6th of May ?

11 A It was the time the body was exhumed,sometime after the

12 4th or also the 4th. I have forgotten which.

13 Q Do you recall who was there ?

14 A Dr. Hogan,the Coroner,the Sheriff,Mr--the nephew of the

15 deceased was there.

16 Q Mr. Jenkins ?

17 A Mr. Jenkins,and myself,and there were several others.

18 I did not pay much attention to who else was there.

19 Q Did you see the body exhumed there ?

20 A It had been exhumed when I arrived. I saw the casket

21 opened and made a record.

22 Q Where was it ?

23 A It was in the little chapel of the burying ground. Yes sir,

Dr. Ath. I have a record he c.

Q Were you present when Dr. Hogan performed the operation ?

A I was.

Q Where did he perform any operation on the body ?

A In the Mount Pleasant Cemetery, Fort Wally.

Q On the body ?

A Yes sir, Ten A.M. to eleven A.M.

Q Did you see the operation performed on the body ?

A I did. I stood about eighteen inches away from him.

Q What did he operate on ?

A Upon a body in a casket named Charles L. Phelps on the

operating plain.

Q What I wanted to get at is what part of the body did he

make any operation on ?

A The arm.

Q Which arm ?

A The right arm.

Q That is the left you have there?

A I beg pardon. The left arm. And he followed the track of

the bullet until it was located near the elbow between

the two lower bones of the arm.

Q Did you see him take the bullet out ?

A I did.

Q And to whom did he hand the bullet ?

A After examining it himself he laid it over in a little box that it is now in, which I had prepared for him, and permitted me to examine it, and we came to a window, about three or four feet away. After I had examined it, both with the eye and with the pocket microscope, he put on its cover and turned it over to the sheriff in my presence.

BY MR. [illegible]:-

Q That was the fact ?

A Yes sir.

BY MR. [illegible]:-(Hamilton)

Q You examined it in the presence of Dr. Hogan ?

A Yes sir, we examined it together.

Q And that bullet that you examined you saw Dr. Hogan put into this box, exhibit***?

A I saw him put it in there after he had put his private mark on it and after I had put my private mark on it also.

Q On the bullet ?

A Yes.

Q What private mark did you put on the bullet ?

A My private mark is two dots, one on the left of his capital H and the other one at the right of the centre of his capital H. They are little pricks in the lead.

1 Q Take it and look at it and see if the marks are on there?

2 (Witness examines bullet)

3 A They are both on there.

4 Q What other mark is on there ?

5 A The capital R that I saw him mark on.

6 Q Who ?

7 A Dr. Hogan,and the two pricks that I have described are

8 also upon these exhibits.

9 Q These are the ones that you mark ?

10 A Yes sir.

11 Q And then it was put in this box ?

12 A Yes sir.

13 Q Did you see Doctor Hogan write anything on the box ?

14 A I saw him write the inscription it has now upon it,exhibit

15 FF. I saw him write the inscription which is now upon

16 exhibit FF. He wrote that in my presence.

17 Q And then yousaw him turn it over to Sheriff Bartlett ?

18 A Right.

19 Q Right there ?

20 A Yes sir.

21 Q And after that was done what happened,what did he do ?

22 A I returned to Albion and began my examination of this same

23 exhibit FF in this room in the Sheriff's building.

Q Did you examine the exhibits CC and DD and EE too at the same time ?

A I had previously examined these, but I also examined these again at that time, having the four bullets together.

Q After you went to Mr. Roberson's at Shelby with the sheriff and the bullets were taken out of these envelopes and put in these boxes as you have described and then turned over to the sheriff, and then you came back to Albion that day ?

A Yes sir.

Q And that day you examined these three exhibits ?

A Yes sir. That was my first actual examination of the three bullets.

Q When you made the examination of the exhibits CC and DD and EE the first time after you came back from Mr. Roberson's who was present ?

A The sheriff I think most of the time. Then absent his deputy.

Q Scott Porter ?

A Yes sir. And as I recall it the District-Attorney was present a part of the time.

Q Who else ?

A And Mr. Charles Newton, and I think George Yerton came in

1 and out, and I dont recall the others. I paid little at-
2 tention. I was looking at the bullets.
3 Q The exhibits were examined there in the presence of the
4 sheriff ?
5 A Yes, right in close proximity to the sheriff.
6 Q And what did you do to the exhibits, if anything ?
7 MR. WITZ:-I object to it as incompetent, irrelevant
8 and immaterial. The so-called exhibits are not
9 in evidence and he has not laid a foundation for
10 putting them in evidence.
11 MR. MITCHELSON:-The Court held I would have to
12 show they were in the same condition they were
13 when taken from the body.
14 THE COURT:-The bullets are in evidence, but, of
15 course, they are subject to be stricken from the
16 evidence if it appears Mr. Hamilton did anything
17 with them down in Auburn, when he had exclusive op-
18 portunity.
19 A I first weighed each bullet.
20 Q I dont mean that. I am speaking if you did anything to
21 these bullets, marked them, or pared them or used any
22 chemicals on them ? Did you change their condition in
23 any way by using any substances or instruments ?

A Nothing ex cept to put a private mark upon each of them.
Upon each of the ones marked by Mr. Osborne with an "y"
I added a private mark of my own.

Q What was that ?

A A little bit inside of his capital E in the lower part.

Q On what side of the bullet ?

A Wherever his E is. I can tell by looking at them.

Q I show you exhibit "yy".

A Exhibit "YY", the large piece has a small pin prick in the
lower part of the capital E. The prick I made myself.

Q Where is it ?

A That is on the front or the rounded portion of the bullet.
That is known as the nose.

Q You put that on there as your mark to identify it ?

A That is my mark of identification. The same conditions
exist upon the small fragments upon one of the smaller
surfaces.

Q That is your mark ?

A Yes sir.

Q Of identification ?

A Yes sir.

Q And aside from making the mark on it the bullet is in
the same condition as it was when it was delivered to you

1 for examination ?

2 A Aside from that no change was made by me in any way.

3 Q I show you exhibit"HH"?

4 A The same conditions,the dot is made on the base of this

5 exhibit"H".

6 Q That is the dot that you made there ?

7 A Yes sir. One of these exhibits I made two dots,one inside

8 of the capital E and the other just outside at the middle.

9 Q The E was the letter E. Emerson placed upon it ?

10 A Aside from that I made no alteration whatever of this

11 exhibit.

12 Q That was done for the purpose of identification ?

13 A Solely.

14 Q I show you exhibit"II" ?

15 A This exhibit"II"has two pin pricks,one inside of the capital

16 E of Mr. Emerson and one outside to the left near the

17 centre. Aside from these two pricks no alteration of that

18 bullet was made by me.

19 Q That was put on by you as a mark of identification ?

20 A Yes sir.

21 Q You spoke about exhibit"FF",didn't you ?

22 A Yes.

23 Q When was it you put the dots on the exhibits GG, II

and JJ ?

A As I recall it immediately before I weighed them at the very beginning of my examination.

Q Whereabouts were you ?

A In the presence of the sheriff in the room over the office of the Sheriff's building.

Q And you there at that time examined the bullets ?

A I did.

Q And Charles Norton was there present also ?

A Yes sir, he examined them also.

Q And at that time did you examine the revolver, exhibit "pr" ?

A I did.

Q And you didn't make any mark on that ?

A I think I did.

(Witness examines revolver)

I did.

Q Where ?

A I placed a capital H with a figure 1 I think at the lower right hand side near where it is marked "H-C" with an X. I will look and see if it is there. Yes sir, my H with a 1 is upon the base of the handle on the nickel portion to the right of a large X.

Q That was put on there for your identification of it ?

A That is one of my identification marks.

Q And aside from that what did you do to the revolver, exhibit "22" ?

A made no alteration of it.

Q Did you fire it off at any time ?

A Never.

Q Did you clean it ?

A Never.

Q Did you use any chemicals or acids in connection with your examination of it?

A None.

Q Did you use any chemicals or acids in connection with your examination of the bullets that you have described ?

A None.

Q Or Mr. Porter ?

A Not in my presence.

Q He examined them there in your presence ?

A Yes sir.

Q And in the office over the jail ?

A Yes sir.

Q And did he use the gun or fire it off ?

A Not in my presence.

Q Or clean it ?

A Not in my presence.

Q After you got through with your examination in that room what became of the four boxes and the revolver ?

A The sheriff immediately locked them up.

Q They were turned back to the sheriff ?

A Yes sir,they were practically in his possession all the while,within two feet of him.

Q He was right there ?

A Yes sir.

Q They were not taken out of the room ?

A No sir.

Q And did you have exhibit"U"there ?

A Yes sir.

Q Yes.

A Yes sir.

Q And that was produced there by the sheriff ?

A Right.

Q And did you have the other exhibit"II"there ?

A Yes sir.

Q That was produced there by the sheriff ?

A Yes sir.

Q And both of these exhibits were examined by you and Mr. Newton ?

A Yes sir.

1 Q Charles Norton ?

2 A Yes sir.

3 Q And what did you do to these exhibits,if anything? I dont

4 mean the examination that you made,but what did you do

5 to the exhibits ?

6 A I made one certain alteration upon the stick,not the one

7 with the map on it.

8 Q What one ?

9 A With the permission of the District-Attorney and the

10 sheriff I removed a small portion of a stain for further

11 examination.

12 Q Where is that located on there ?

13 A There I removed my portion is that bright,fresh wood spot

14 appearing near the centre,a dark,reddish stain,and is

15 about thirty-one and one half inches,or is about nineteen

16 inches from the round-ended handle end and about twelve

17 and one-half inches from the cut end.

18 Q How did you take that off ?

19 A With a sharp knife.

20 Q And you took it off for what purpose ?

21 A To determine what the stain was.

22 Q Examine it ?

23 A I did.

Q Aside from that is that stick in the same condition it was when you examined it ?

A It is.

Q No other alterations in it ?

A None.

THE COURT:-Has he told about the revolver when it was in Auburn at his office ?

MR. MCINTYRE:-No,I was going to get to that.

Q You know John Rice ?

A In the sheriff's office ?

Q Yes.

A I know him by sight,yes sir.

Q Do you remember the occasion when he came down there with these exhibits ?

A I do.

Q Or some of them ?

A I do.

Q When was it ?

A May 11th,I think was the day.

Q What time did he arrive there ?

A Close around eleven o'clock. That is,to my office.

Q What did he bring with him ?

A The four bullets already shown me.

Q And in those boxes ?

A Yes sir, and the revolver already shown me.

Q That is the exhibit "UU" ?

A Right. He had them locked up.

Q In what ?

A A nice little traveling bag, when he came into my office.

Q Do you remember whether they were in that little tin box there ?

A I remember whether they were or not, yes sir.

Q Were they ?

A He is mistaken about that. They were not in that tin box when he came.

Q How did he have them ?

A I got that tin box for him while he was there.

Q He had them in his grip ?

A The bullets were in the boxes also by side rolled up in a newspaper and tied with a string. The revolver was done up in another newspaper and tied and in a little traveling bag, and that was locked. And yet in he was there I produced the tin box that was here and when he went away locked them in and gave him the key, and then he locked this box in his bag when he departed.

Q When he started ?

A Yes sir.

1 Q That forenoon while he was there what did you do with
2 these exhibits ?
3 A First I took the gun,leaving the remaining articles in
4 his bag.
5 Q Did you examine any of the exhibits before lunch ?
6 A I think the examination began right after lunch. I simply
7 got ready,got everything prepared that I was to do before
8 lunch and then we went out,he went somewhere,I dont know,
9 and I gave him the key to my office and set a time that
10 he would return and I would meet him.
11 Q When you went to lunch what did you do about locking the
12 door,if anything ?
13 A It is a spring lock and I threw on the spring and had him
14 pull the door to and we started away,and he stopped back
15 to see if it was locked,which he found it was.
16 Q It was locked ?
17 A It was locked.
18 Q What did you do with the key ?
19 A He had it then.
20 Q Did you give it to him ?
21 A I gave it to him.
22 Q The key to your office door ?
23 A Yes sir.

Q Where was the office located ?

A It was room 3 at the head of the first flight stairs over Seward's bank in the Seward Bank building.

Q Any more than one entrance to it ?

A Only one.

Q Just this door that you speak of ?

A Just this door that I speak of.

Q You say the first floor ?

A It is the second floor proper. It is the first floor above the ground.

Q Then you went to lunch and you got back what time ?

A I dont know the hour that he came to Fairbank, but he was back ahead of me and waiting for me. I had to go a mile to my lunch and back a mile, and he was there waiting when I arrived.

Q Where was he, in the office or not ?

A No, he was in the hall outside. He hadn't gone in.

Q Who unlocked the door when it was unlocked ?

A He first tried to unlock it and put the key in bottom side up and he gave it to me and I unlocked it for him.

Q In his presence ?

A Yes sir.

Q Now, when you went in and there were these exhibits when you went in ?

A They were right where he had left them in his chair. There was a Morris chair in the corner and he had left the package in that chair.

Q In the same condition as it was when you went away ?

A Yes sir.

Q Go on and tell the jury what you did ?

A They were locked up at that time in this can. He had the key to this can when he went away.

Q You went to lunch ?

A yes sir, they were doubly locked. They were locked in this can to which he had the key, and then this can was locked in the office and he had the key to my office.

Q And the tin box was there ?

A In his bag, the tin box.

Q I thought you said they were on a chair ?

A They were, but the bag was on the chair.

Q After you got back from dinner what did you do about any of these exhibits ?

A I took the revolver and took a photograph first of the revolver itself, a side view, and I next took a photograph, I am now speaking of negatives. I made a negative, not a picture, I made a negative of the muzzle end.

Q I am trying to get at the question whether you changed

1 the position of these exhibits. What did you do about
2 the exhibits ? Did you do anything or see anything on
3 them ?
4 Q You want just what happened there ?
5 A Yes.
6 THE COURT:-Do,he wants to know this,when you re-
7 turned the revolver and the bullets to Mr. Rice
8 were they or were they not in the same condition
9 that they were when you received them from him in
10 the morning when he came there with them,when you
11 first saw them that day ?
12 A When he left to come back around four o'clock the revolver
13 and the four bullets,consisting of five pieces,were in
14 the same identical condition as they were when he came
15 into my office with them in the morning,in the forenoon,
16 and I had added nothing to them,nor removed anything from
17 them,nor changed their form.
18 Q Or appearance ?
19 A Or appearance.
20 Q Or used any instruments upon the revolver or bullets ?
21 A No instruments,no chemicals.
22 Q Or scratched them I mean ?
23 A Nothing of that character.

Q Or make any additional marks on them ?

A Nothing beyond what I have already testified to here.

Q And you are able to state that the bullets and the revolver were in the same condition when you saw them there in the office in Auburn as they were when you examined them here in the presence of the sheriff in Albion ?

A I know that, yes sir.

THE COURT:-

Q You mean these marks of identification ?

A yes sir, I mean these marks of identification.

MR. WHITE:-(illegible)

Q Outside of that ?

A Outside of that I know.

THE COURT:-I think you can offer your revolver in evidence now.

MR. KNICKERBOCKER:-I thought they were in evidence.

THE COURT:-They are in evidence subject to be stricken out.

MR. KNICKERBOCKER:-I offer CC, DD, EE and FF in evidence.

THE COURT:-They are now in evidence, and I now deny Mr. White's motion to strike them out, which I had reserved the ruling on until Mr. Hamilton should

testify.

MR. WHITE:-Exception.

MR. KNICKERBOCKER:-I now offer in evidence exhibit "GG" for identification.

THE COURT:-The revolver ?

MR. KNICKERBOCKER:-The revolver.

THE COURT:-It may be received.

(Revolver marked "People's exhibit GG")

MR. WHITE:-I have the same objection I made before with reference to the bullets ?

THE COURT:-Yes, the same rulings, so if you want an exception you may have it noted on the record.

MR. WHITE:-Yes, exception please.

Q Did you examine at the sheriff's office exhibit "HH", this rifle ?

A I did.

Q And did you put any mark on that of identification ?

A I did.

Q What mark ?

A A capital H and the figure 1 on the wooden stock just in front of the breaking joint and to the right of the letter scratched in R-G X on the forward portion of the woodwork of the gun.

Q And aside from that it is in the same condition it was when you examined it ?

A Exactly. No change made by me.

Q That was turned back to the sheriff ?

A Yes sir.

Q And that examination was made in the presence of the sheriff at the same place ?

A Right.

Q By you and Charles Newton ?

A yes sir.

THE COURT:-We will now take a recess for five minutes. And,gentlemen,you will remember the admonition I have heretofore given you not to talk about the case,or allow anyone to talk to you about it.

(The Court recesses after recess)

Q Mr. Hamilton,did you sometime go to the Phelps home in Shelby ?

A I did.

Q When ?

A May 1st,1915.

Q And this here,exhibit"AA",you remember seeing that here ?

A I did.

Q And examined it at that time ?

A And examined it at that time.

Q And examined the hole in the glass ?

A I did, made measurements, and so forth.

Q And what do you say as to whether the condition of the glass in the door and the hole in it is the same as it was at that time ?

A It is just the same except the glass is a little cleaner than when I firs saw it, but the fracture and the fractured hole is identical with when I first saw it.

Q You were present when Mr. Stillman took that photograph of the door ?

A Yes sir.

Q And the hole in the door ?

A Yes sir.

Q or the hole in the glass ?

A Yes sir.

Q And that was done with reference to taking that photograph ?

A The door was taken from the hinges and carried out under a tree so that the background of the glass would be dry or light instead of the dark condition of the room where the door hung.

Q For the purpose of obtaining

1 What ?

2 A To get a more proper background and prevent a duplicate

3 picture because its being glass if it was photographed

4 where it hung on the hinges the darkness of the room

5 would have acted as a mirror and in the photograph would

6 appear a picture of the camera itself,so that I had the

7 door removed and taken out where there was no duplicate

8 picture taken. The photograph would give simply the glass

9 and nothing else.

10 Q And make a full size photograph of the hole ?

11 A Yes,had to reduce it. We had to use a 5 by 10 negative.

12 Q Is that exhibit"U"the photograph ?

13 A Yes sir.

14 Q And you saw him take exhibit"U"up there ?

15 A I saw him make the negative.

16 Q The negative ?

17 A Yes sir.

18 Mr. Smith-I move to exclude from the record this

19 exhibit"U",upon the ground that the door and the

20 glass and the hole which this picture purports to

21 represent is in evidence,and that the photograph

22 is incompetent,irrelevant and immaterial.

23 Yes sir?-

24 Q Whereabouts you live ?

A May 1st,1915.

THE COURT:-This tends to show the door now is in the same condition as it was on May 1st,1915. To that extent I suppose it is competent.

MOTION DENIED.

EXCEPTION ENTERED.

Q Did you obtain one of these negatives for some purpose?

A I did.

Q For what purpose ?

A I was to restore it to the exact size by re-photographing it.

Q Exact size of what ?

A So that the picture would be the exact size of this pane of glass.

Q And the hole ?

A And the hole,yes sir.

Q The exact size of the hole ?

A yes sir.

Q In the glass ?

A yes sir.

Q And that is simply a picture of that part of the door or glass with the hole in it ?

A yes sir,slightly reduced.

Q And after the picture was taken up there the door was put back, was it ?

A Put back on the hinges, and I made provision, or converted provision for the preservation of the glass in the same condition that I first saw it and guard against loss of any pieces of the fractured glass.

Q What was done about it ?

A I got two large pieces of heavy writing paper from the sheriff's office and with laboratory paste I pasted one down from the top of the broken point, down from the fractured portion to nearly the bottom of the oval surfaces of the glass, and another piece on the outer surface entirely covering it up .

Q That was for the purpose of hanging it in place ?

A So it would not get loose in transit.

Q And to preserve the hole ?

A Yes sir.

Q The size of it ?

A Yes sir.

Q And when did you take any measurements of that hole, if you did at all ?

A That same day I made measurements and laid a sheet of paper from my note book over the door and made a tracing

like I have in my hand.

Q A tracing of what ?

A Of the hole through the glass.

Q Then the hole itself ?

A Yes sir, then I took measurements of the glass and the door and the distance from the hole to the door sill, and the distance to the steps below, the depth of the steps, and various other measurements connected with the entrance.

Q The kitchen entrance ?

A Yes sir.

Q And what were those measurements ?

A The bullet hole through the pane of glass was 13/16ths of an inch in diameter approximating, which was irregular in its circumference, but the approximate diameter is 13/16ths.

Q Of an inch ?

A Yes sir, of an inch. The hole is two inches from the outside of the wood and six and 13/16ths from the other side. The centre of the hole is three feet eight and one-half inches above the door sill.

Q The door sill ?

A The door sill, yes sir. The bottom of this pane of glass containing the hole is two feet eight inches above the same

1 sill. The first step outside was four and one-half inches
2 below the floor of the kitchen as you stepped out. The
3 height of the hole in Miss Wolcott's body was estimated
4 as far as my personal knowledge.
5 Q One step, was it ?
6 A There are three steps, two wooden steps and the ground.
7 It is about nine inches from the ground up onto the first
8 riser, and then it is four inches up onto the second,
9 and four and one-half inches from that up onto the kitchen
10 floor. The top step is one foot and ten inches wide and
11 four feet four inches long. The second step coming down
12 is one foot four and one-half inches wide, the same length
13 as before.
14 Q The measurements of the hole are from the distance that
15 you have mentioned here from the woodwork on each side of
16 it ? That is what you have reference to, didn't you ?
17 A Sure, from the hole to the wood on the right or left side,
18 and on the right side and the chipping off of the glass,
19 that is the chipping off away from the hole, the chipping
20 off is on the outside of the pane of glass, and on the
21 inner surface it is smooth right across. In other words,
22 the fracture is from the interior outward and not from the
23 outward interior.

Q You are able to state that, are you ?

A As it is here. It is easy to see, yes sir.

MR. WHITE:-I ask to have the latter part of the answer read.

(Answer read by the stenographer as follows:)

"In other words, the fracture is from the interior outward and not from the outward interior".

MR. WHITE:-I move to strike out what was just read by the stenographer of the answer of the witness as being a conclusion.

THE COURT:-He had a right to give his conclusions from expert observations.

MR. WHITE:-An exception.

THE COURT:-He is stating it as a fact and not as a conclusion.

MR. WHITE:-I do not think it is a matter of expert testimony.

THE COURT:-It may stand.

MR. WHITE:-Exception.

THE COURT:-The witness may explain.

A I examined it with a microscope, the manner of the glass breaking, whether the radiation that is surrounding it, the

1 radiated fractures that surround the bullet hole itself,
2 whether the waves were traveling from the inside outward,
3 or whether those waves in the glass which are the fractured
4 waves were from the outside inward, and to my eye they
5 appear to be waves in the fracture extending from the
6 inner out, or towards the outer surface, and receding or
7 increasing in diameter. This I subsequently verified by
8 another process.

9 MR. WITT:-I move to strike out the answer as in-
10 competent and irrelevant and immaterial, and a con-
11 clusion and not the subject of expert testimony.

12 THE COURT:-"This I afterwards verified by another
13 process" may be stricken out. The balance of the
14 answer may stand.

15 MR. WITT:-Exception.

16 Q. So from your examination that you have made of this glass
17 and the hole you are able to state with reasonable cer-
18 tainty that the hole was made by force from the inside
19 outward ?

20 MR. WITT:-That is objected to as incompetent and
21 immaterial and irrelevant and leading and an im-
22 proper form of question.

23 THE COURT:-If we were supposed to be very critical,

you may say he had not really shown his ability to say whether the force came from one side of it or the other. So may as well tell that now and get the facts on the record.

MR. WITE:-Exception.

Q Are you able to tell on examination whether a shot fired through glass is fired from one side or the other ?

A I am, yes sir.

THE WITNESS:-

Q How are you able to tell if you did not see the glass and examine the hole for the purpose of ascertaining what the appearance of the glass is ?

A I am able in manner that by having shot through pieces of glass with this kind of ammunition with a revolver identical with this exhibit 88, and knowing the results of those shots with the gun held at various distances from contact. The muzzle against the glass, off at different distances, and a study of those positions, that connection, with similar shots through glass fired by me in many other experiments.

THE COURT:-With this explanation the whole thing may stand. Motion to strike out denied.

MR. WITE:-Exception.

MR. [illegible]:-([illegible])

Q In this breaking of that place there protruding that hole was the force in your opinion from the inside out ?

MR. WHITE:-That is objected to as incompetent, irrelevant and immaterial and leading and an improper form of question and not a subject of expert testimony, and the witness not shown to be qualified.

THE COURT:-I will sustain your objection but not on all the grounds stated. The witness has already answered the question.

Q Did you see the door after that ?

A After that day ?

Q Yes.

A Yes.

Q When ?

A The day that it was produced in court here this week.

Q From that time up to the present time you had not seen it ?

A I saw it, yes, upon other occasions but not to examine it closely.

Q That is what I mean ?

A I saw it, yes.

1 Q Then and at that request did you examine the revolver,
2 exhibit "SS" ?
3 A May 1st, 1910, at the request of the District Attorney, Mr.
4 Innerbocker.
5 Q Where ?
6 A In the sheriff's room over his office in the sheriff's
7 presence.
8 Q That is also true with reference to exhibit "UU", the rifle,
9 isn't it ?
10 A Yes sir.
11 Q And also true with reference to the bullets, exhibit "SS"
12 "TT", "UU", and "VV" ?
13 A Right.
14 Q And also true with reference to exhibit "WW" ?
15 A Right.
16 Q You have already told who was present when you made the
17 examination ?
18 A As far as I recall.
19 Q And you have told us in whose custody these exhibits were
20 at that time when you made this examination ?
21 Right.
22 Q How long did it take you to make your examination and
23 tests of these exhibits that your attention has been called

to ?

A Of the four bullets and revolver I think it was two days, first and second of May.

Q Did that include the exhibit "BB", the stick ?

A It did not. That is, the superficial examination, yes, and the final, no.

Q When did you scientifically examine the stick then ?

A During the subsequent days that I was here examining these exhibits from May 1st to May 7th. I finished on May 7th, the evening of May 7th.

Q From what time to what time ?

A During the subsequent days that I was here examining these exhibits from May 1st to the evening of May 7th, inclusive.

Q What did you observe with regard to the rifle, exhibit "XX", if anything, on your examination ?

A That it was a 22-calibre model of 20V, rim fire, manufactured by the Hamilton Rifle Company of Plymouth, Michigan, single shot, barrel one foot three inches long, diameter of bore .22; that is, 22/100ths of an inch.

MR. SMITH:-If the Court please, I move to strike out the answer on the ground the question is irrelevant and immaterial and incompetent, and by under-

standing is that this exhibit the witness has in his hands is only in evidence for the purpose of contradicting an alleged statement that this defendant made,and it is not in evidence for any other purpose.

THE COURT:-It is not in evidence at all as yet. It is merely marked for identification. I think the answer may stand now it has been given.

MR. WHITE:-Exception.

THE COURT:-It is not prejudicial. If the witness gives any incompetent evidence I am not going to preclude you from having it on your objection because you do not get it in at any particular time. His answer is entirely responsive to his question. Mr. Knickerbocker asked him what he discovered with regard to the rifle and he has told us what he did discover,described it. The answer may stand.

MR. WHITE:-Exception.

A One thing that should be added to that answer that I have omitted,the barrel contains fifteen lands and fifteen grooves,each of which are about .005,or rather about two and one-half one hundredths of an inch in width.

THE COURT:-There is no claim made by the People the

1 bullets found in the body of Mr. Phelps and Miss
2 Wilcott were fired out of that rifle, is there ?
3 Mr. [illegible]-No.
4 THE COURT:-There is no claim on the part of the de-
5 fendant that such is the case, is there ?
6 Mr. WIRT:-The claim of the defendant is the de-
7 fendant did not shoot any revolver.
8 THE COURT:-And, therefore, they were not fired out of
9 this rifle ?
10 Mr. WIRT:-Certainly.
11 THE COURT:-It is not necessary to go into any pro-
12 cess of elimination to show the bullets were not
13 fired out of that rifle. It may become competent
14 to show whether Mielow did have a gun or not.
15 And I think in order to be on the safe side about
16 it I will grant your motion and strike out the
17 answer and sustain the objection to the question.
18 Q I show you a revolver, exhibit "CC", and what did you observe
19 with regard to that exhibit on your examination ?
20 A First that its number was 6215, of 38-calibre, rim fire,
21 Hartington & Richardson Arms Company, the cylinder con-
22 tains seven numbers, nickel plated, barrel ten inches long,
23 the gun is double action.

1 THE COURT:-

2 Q What do you mean by double action ?

3 A The hammer can be raised by the finger and cocked and

4 then snapped, or by placing the finger upon the trigger

5 it can be pulled and snapped. These are the two actions.

6 The interior of the barrel is rifled so that it contains

7 five lands and five grooves. The lands are .06, or 6/100ths

8 of an inch wide; the grooves, the space between these

9 elevated lands are .07, or 7/100ths of an inch wide.

10 Q You are calling a part of that interior there the grooves

11 and the rest of it lands ?

12 A Lands.

13 Q L-a-n-d-s ?

14 A L-a-n-d-s.

15 Q And you mean by the word "land" the portion of the inside

16 of the barrel——

17 A That was not rifled out when it was rifled. As originally

18 made the gun was bored with a smooth hole through and then

19 is rifled cutting strips in back and outward with bits,

20 and these began from left to right, little grooves were

21 cut in by the bore, and that portion of the original bar-

22 rel that was not cut away by that raking motion is called

23 a land, and the five are call the five lands, and the cuts

down into the metal itself are called grooves.

M. VIRNOVEN:-[illegible]

Q That is speaking with reference to the construction of the gun itself ?

A That is the mechanical construction of the gun itself. These are what I term the normal conditions of the interior of the gun which are made by machines.

Q What is the purpose of the lands and of the grooves ?

A They are to give a rotary motion to the bullet as it traverses the gun from the rear to the muzzle, so that after leaving while traveling through space revolving in a rotary motion it will run through the air. If that was defective and the rotary motion upset the bullet is likely to strike flat or quickly go end over end, and thus simply gives the precision of the travel of the bullet

Q You are speaking about the rifling ?

A The rifling, yes sir. I noticed also that this particular exhibit "CC" had been so constructed that the cylinder fitted tightly against the rear of the barrel, when the hammer is down against the cartridge it holds the cylinder tight against the barrel. There is no opening. The explosion of gases does not leak out in the rear, and this particular gun causes the explosion of gases all to exit

from the muzzle and follow the bullet out. And I noticed, in addition to the natural marks of this gun like the rifling, I looked for abnormal conditions, particularly at the muzzle, and I found that a pair of lands and grooves, a single pair, and they were starting down here beginning with the sight, as I looked into the muzzle immediately under the sight is a land and projecting down into the bore. On its edge towards me, at the very edge where the ball leaves the gun, that is perfect; there is no injury upon that, but the land immediately to the left, or the groove I should say, and immediately at the left of the sight and the land next to that makes a pair, and the two are 11/100ths of an inch over all, and they contain at the very edge of the muzzle at the middle nine abnormal defects, or nine defects, extending in a row, four of them approximating equal distance from each other, about 1/100ths of an inch apart, and scattered along the edge of the bottom of that first groove I have described, and four more are scattered along the top edge of the first land to the groove I have described, and the ninth one, the largest of all, is at the very dividing line, at the point of dividing between the land and the groove, or the groove and the land. Under the microscope they are like nine teeth to a saw with

the depressions between them. They are rough, irregular, ragged in their appearance under the microscope. I photographed that particular locality at the time I made the photograph. The four on the top the lands are approximately 1/100ths of an inch apart like those in the bottom of the groove. I at that point took the three bullets that were for me to examine and noticed the markings upon their surfaces, and I found each bullet on its outer surface around the base, not the bottom point, or the side above the base, was so arranged that each set--I will take a bullet at a time. First I call bullet No. 2, the one from the side of Mr. Phelps, exhibit "MM", I found upon this bullet that there were five lands and five grooves. A bullet passing through GG receives the imprint through that, the groove on the revolver GG makes that land on this bullet the width of the groove, or the depression in the gun would be the width of the elevation of that bullet. And I found that the lands and grooves upon the bullet MM were five lands and five grooves. The lands were 7/100ths of an inch wide, .07, and the grooves were .06, and a pair of them were .13 of an inch wide, and on one side of this bullet I found nine defects or scratches running parallel with each other; that is, they were to my eye, they had the appearance

of something making nine little parallel lines. Four of
them were in upon the top. As I looked at the nose of the
bullet and turned over towards my left a land on the bullet,
which would be a groove in the gun from which it was fired,
had four of these defects or scrapes across that land.
The next groove to the left of that had four in the bottom
of it raked across it. And at the point between the land
on the bullet and the groove on the bullet going over to
the left was the most pronounced scratch or defect, and
they approximated 1/100ths of an inch wide. I then ex-
amined in regard to these nine defects upon the gun CC,
the bullet that was marked from the hand of Mr. Phelps,
exhibit CC, and upon this bullet I found there were visible
three of the five lands and four of the five grooves;
that it was a bullet originally marked---that is, they
were the remains of five lands and five grooves, but only
three and four were sufficiently preserved to properly
measure their width. The lands were the same as the first
bullet I have described, .07 of an inch wide. And the
grooves were .07 of an inch wide, and a pair of a land and
a groove that were .13 of an inch wide had nine defective
scrapes across, and the first four were upon the top of a
land and in the bottom of a groove. And the 9th one was

1 in the dividing point between the land and the groove
2 on the bullet. And they were approximately .001 of an inch
3 apart and were extending the length of the land-groove
4 in that portion that was preserved. The smaller piece—
5 that was on the large piece,the smaller piece had a piece
6 broken off from the nose of the bullet where no rifling
7 had touched it.
8 Q. That is the exhibit that is in two pieces ?
9 A That is the exhibit"CC" in two pieces,which reads"From
10 the skull of Charles Phelps". I then examined or compared
11 with this same revolver an exhibit bullet from Miss
12 Bolsott,it reads on the package.
13 Q. "DD" ?
14 A Exhibit"DD",and I found visible all those five lands and
15 five grooves,and the lands were .07 of an inch wide,the
16 same width that I found upon the two preceding bullets,
17 and the grooves were .06 of an inch wide,the same width
18 I found on the two preceding bullets,and a pair of a
19 land and a groove that were .13 of an inch wide,the two,
20 and as I looked at the nose of the bullet it is more of
21 an extending over from the right to left,the top of a
22 land had four defects running parallel across it like
23 scrapes,and in the bottom of the next groove to it were

1 four defects like scratches across it, and the most pro-
2 nounced one, the 9th in the middle between those two
3 pairs of fours, and all of them approximating .001 of an
4 inch apart.
5 THE COURT:-
6 Q Mr. Hamilton, were you able to detect those markings on
7 the bullet with the naked eye, or did you do it with the
8 aid of a microscope ?
9 A First with a microscope and afterwards with the naked
10 eye. They are seen best with this small pocket glass
11 I hold in my hand. If you use too high power you do not
12 get as good vision as low power, but I think these defects
13 on some of the bullets are plainly visible to the naked
14 eye.
15 MR. [illegible]:-[illegible]
16 Q How did you make the examination of the revolver, with
17 what ?
18 A That I placed under a compound microscope.
19 Q The muzzle of it ?
20 A With the muzzle pointing up into the objective, and ex-
21 amined it with a high power microscope looking right down
22 into that section that I have already described. I exa-
23 mined the rim of the muzzle, all the lands and all the

grooves at their edges,and also changing the focus so to look down into the muzzle to the depth of a quarter of an inch.

Q The peculiar markings that you have described in the land and the groove there consisting of nine points of scratches could you see that with the naked eye or through a microscope ?

A I think,if you have fairly good eye-sight you can step to the window and see them with the naked eye by holding it in a normal position.

Q Have you got a microscope here ?

A Yes sir,the one I did use.

Q On the examination of the bullets and of the revolver ?

A Yes sir.

THE COURT:-

Q You have described how many bullets ?

A Two.

Q Still another ?

A Later my attention was called to the bullet that I saw removed from the arm of Mr. Phelps. I compared that with the muzzle defects of exhibit 66 and I found the bullet FF,which is marked"From the arm of Charles Phelps"contained five lands and five grooves upon its surface all

visible, the lands were .07 of an inch wide, the same as the other three bullets, and the grooves were .06 of an inch, the same as the others. That one pair of a land and groove that were .12 of an inch wide contained these nine defects that I have minutely described on the other three bullets and corresponded in their measurements, in their shape and their location as I have already described. I also examined this revolver as to dirt, smoke, powder deposits, or what-not, that might appear upon its interior, that is its firing parts, and I found that the interior of the seven cylinders were clean.

Q Had been cleaned ?

A No, they were clean. I did know what had been done to it. They were clean when I saw it. There was no smoke or deposit.

Mr. Smith:-

Q Where a revolver has been used and when it has been cleaned you often see a line drawn, do you not, to indicate where the course ended ? The shell part I mean ? You do not make any particular claim that had been fired off, that cylinder ?

A There are rust spots in there now indicating at some previous time this gun has been fired and incorrectly pre-

served,but there is no deposit in here now,there is no remaining deposit now showing recent firing.

MR. [illegible]:-[illegible]

Q That is in the cylinder ?

A That is in the cylinder,yes sir. There are rust spots in each of those chambers showing that sometime it has been fired and not properly cleaned and it has rusted. At the breech point,the firing hole where the hammer snaps down and goes through a little opening and strikes the rear of the shell,there was no powder smoke or recent discoloration around that,and that was dum. There are many blackened cylinders and rust spots that have been of ancient use. Then I examined the interi r of the barrel and I found that posted from rear to the muzzle with what at the time of the examination looked like,what I found from casual examination to be black gunpowder smoke,or was black gunpowder of the kind of--There are two kinds of black gunpowder,one compound of sulphur,saltpeter and charcoal; there is another black gunpowder known as semi-smokeless. This deposit that I found in this gun in the barrel was of the sulphur,saltpeter and charcoal variety of black gunpowder.

Q Now did you make that examination ?

A Microscopic through the muzzle and examining the breech of the cylinder,or of the barrel.

Q Is that all ?

A That is all I recall at this moment.

Q Are you able to state as to what produced the nine defects in the gun that you found to be existing in the lands and grooves ?

A I can simply tell this much. It could have been caused from one of several causes but which one of them I would not be able to state.

Q From what causes ?

A Fire,improper cleaning after firing which would result in rusting; improper plating and polishing at the muzzle; an improper use,or the use of improper instruments in cleaning the gun over a period of years. My best judgment is that this corrosion,rusting,and the use of metal instruments in cleaning it is the cause of these defects,of these lands and grooves.

Q What are these defects ?

MR. WITH:-

Q Mr. Hamilton,is it necessary for you to turn that when testifying,to keep turning it ?

A No sir,I will not you have it.

Q I haven't any use for it. I asked you a question.

A Here. I will lay it right here by the stenographer.

MR. [illegible]:-([illegible])

Q What are the defects that generally exist there in the end of the revolver ?

A They are quite like metallic teeth,as it were,not needle pointed but blunt,that extent along the very edge of the muzzle. They extent along that area that causes the final impression upon the bullet passing through it. The markings upon a bullet coming out of a given gun receive their markings from the condition of the metal at the muzzle and not down beyond the interior. It may receive a marking in the interior,but the final marking upon the bullet is as it issues from the muzzle.

Q What I want to get at is how they were produced there. The gun was not constructed that way in the first place ?

A No sir,it is an imprint really.

Q That would be from the over-accumulation in the substance, is that it ?

A Not accumulation,no sir. From destruction of the original.

THE COURT:-

Q What you mean is this-under ordinary ideal conditions that muzzle,- the edge of it,is that what you call it ?

A Yes sir.

Q. Would be smooth ?

A. Yes sir.

Q. And you found nine little,you call them scratches ?

A. No,they are larger than that. They are really projections.

Q. That is to say,they stick out from the smooth ?

A. Yes sir.

Q. Again ?

A. Yes sir,but between these projections it is irregularly rough.

Q. We do still not get any wrong idea of it,how high are these projections from the smooth ?

A. I should say they were approximately from .001 of an inch to 1/2000th of an inch in altitude above the floor of the smooth.

Q. And as compared with those grooves of those lands they are similar ?

A. Yes sir.

[illegible]:-(Resumed)

Q. These projections as you have described you say they were necessarily made on the bullet in its passage out of the barrel of the gun ?

A. Yes sir. A bullet going out under powder would receive a marking of these projections. That is,a projection would

make a depression upon the bullet, a depression in the muzzle would make an elevation upon the bullet.

THE COURT:-

Q Even these depressions would make a small scratch, or scratches, rather, on the surfaces of the bullet ?

A Yes sir.

MR. WHITEHOUSE:-(RESUMING)

Q And you found the scratches made by these projections on each one of these bullets, did you ?

A I did.

Q And in the same comparative location on the bullet as it enters in the muzzle of the gun ?

A Yes sir.

Q On each of the bullets ?

A Yes sir.

THE COURT:-

Q You are assuming something in answer to that question that may be perfectly right and proper? You are assuming that these bullets were fired out of that revolver. You do not know that, of course ?

A I am stating what I find. That is what I intend by my answer. I did not pretend to say these particular projections came from these particular scratches. I simply told

you how they relate to each other.

Q. You found scratches which you have described on the bullets, and you found projections which you have described on the revolver ?

A. That is all I meant to say.

Q. You are not assuming to indicate as to where the bullets came from as yet ?

A. Not unless you permit it.

Q. You have not been asked that ?

A. Not unless you permit it.

Q. [illegible]:-[illegible]

Q. Have you told the jury of all the examination about the bullets and the revolver ?

A. Not about the bullets. I have only told you part about the bullets, but all I recollect about the revolver at this [illegible].

THE COURT:-Gentlemen of the jury, I again admonish you that it is your duty not to talk amongst yourselves about this case; particularly, of course, not to allow anyone to talk to you about it, or form or express any opinion thereon until you take the cause into the jury room for the purpose of considering your verdict.

We will not take a recess until 1:30.

A L B E R T S. H A M I L T O N, recalled and direct-examination continued by Mr. Heinsheimer:-

Q Mr. Hamilton, from your examination and investigation of the four bullets, exhibits CC, DD, EE and FF, are you able to state whether or not these four bullets were fired through the same revolver? Are you able to state with reasonable certainty whether these four bullets were fired through the same revolver?

A Yes sir.

MR. WEIN:-I object to the question as incompetent and irrelevant and immaterial; and not the proper form of question and not the subject of expert testimony.

THE COURT:-He cannot state they were fired through my revolver. He does not know. Objection sustained. You have to frame a hypothetical question covering the facts which you expect to prove and ask him for his opinion on those facts. He is not to state they were fired through my revolver. On a hypothesis that the revolver was held and discharged, the revolver he has there, and on a hypothesis these bullets were taken out of the body of Mr. Phelps and Miss Nelcott, he may be able to state on that

hypothesis where those bullets came from, but he cannot state they were fired out of the same revolver, or out of any revolver. He does not know. It is impossible for him to know as long as he did not see the revolver.

M. [illegible]:-I am not asking him that in that way.

THE COURT:-You have my ruling.

Q Mr. Hamilton, have you been here during the course of the examination of Dr. Hogan and Dr. Hoberson and Dr. Mahony?

A Yes sir.

Q And heard their testimony here?

A I did.

Q In relation to the recovery of the bullets, exhibits CC, DD, EE and FF?

A I did.

Q Heard all their testimony in relation to it?

A Yes sir, including the scalp and piece of skull.

Q Assuming that the bullets, exhibits CC, DD, EE and FF, were recovered from the bodies of Charles H. Phelps and Margaret Walcott under the circumstances and conditions described by the doctors while on the witness stand that you heard testify, and from your examination and investi-

tion of those bullets, exhibits CC, DD, EE and FF, are you able to state---

THE COURT:-As testified to by you here on the witness stand.

Q As testified to by you here upon the witness stand, are you able now to state or determine whether those bullets were fired from the same revolver or same gun ?

MR. WHITE:-That is objected to as incompetent, irrelevant and immaterial and not a proper foundation laid, and not a proper form of question, and assuming facts not proven and omitting facts proved.

THE COURT:-What is the last part of the question ?

(Latter part of the question read by the stenographer.)

THE COURT:-You better take the further assumption they entered the bodies of these persons by being propelled from a weapon or revolver, or a gun. There is not any evidence as yet they were. With that hypothesis I think he may answer the question. Can you tell ?

A May I have that question re-read, please ?

THE COURT:-Yes.

(Question read by the stenographer)

I I m.

MR. WHITE:-If the Court please, I want to call the Court's attention to the fact that it has not been established that the witness heard all the testimony of the doctors.

THE COURT:-He says he did. We could be in here in a preliminary question.

MR. WHITE:-Only in response to one doctor.

MR. INTERROGATOR:-I asked him about all three of them.

THE COURT:-I think he asked him about all the doctors who extracted bullets from these bodies. He may say whether he heard all the evidence on that point.

THE COURT:-

Q You heard all the testimony ?

A I heard the complete testimony here.

Q All the doctors ?

A All three doctors; Dr. Hansen, Dr. Lohrman and Dr. Hogan, given this week during this trial.

MR. WHITE:-One of the objections to the form of the question is that the facts as testified to by the physicians should be stated in the question.

THE COURT:-Not necessarily. The other form is

permissable. In this case much preferable in my judgment. He says he can answer.

MR. WHITE:-In exception.

THE COURT:-You have your objection,ruling and exception.

MR. [illegible]:-(Resuming)

Q What do you say,in your opinion were they fired from the same gun or revolver ?

MR. WHITE:-That is objected to as incompetent, irrelevant and immaterial.

OBJECTION OVERRULED.

EXCEPTION RESERVED.

A In my opinion the four bullets,exhibits as enumerated, were fired from one and the same revolver.

Q Mr. Hamilton,assuming that the four bullets,exhibits CT, CU, CX and CY,were taken from the bodies of Charles E. Phelps and Margaret Velsott,as described in the testimony of Dr. Hanson,Dr. Bekerman and Dr. Hogan,and from your examination of these bullets and of the revolver,exhibit CS,identified to by you in your investigation and examination of the revolver and bullets,are you able to state, or can you state with reasonable certainty whether these four bullets were fired from this revolver,exhibit CS ?

MR. WHITE:-I object to that question on the same grounds as before.

THE COURT:-He may answer.

MR. WHITE:-An exception.

A I ---.

Q What do you say, were the four bullets, exhibits 22, 23, 24 and 27, fired from this revolver, exhibit 08, in your opinion?

MR. WHITE:-I desire to object to the question as incompetent, irrelevant and immaterial. No proper foundation laid, and not the subject of expert testimony.

THE COURT:-I suppose the question is limited to whether the bullets were fired from the same revolver, and the witness is not allowed to give his opinion as to whether they were fired from any particular revolver. That is my notion of it. I so rule. Objection sustained.

Q Did you make any other investigation or examination of any one of these bullets ?

A Yes.

Q Which exhibit ?

A All four of the bullets.

Q What other or further examination did you make ?

A I examined each of the four bullets,exhibits enumerated, to determine their caliber,their manufacture,approximate age of manufacture,or kind of unfired cartridge that contained such bullets,and what markings were upon these bullets that were made by the manufacturer that made them;and the kind of powder that left its imprint upon their base when fired. These are the particular things.

Q What was the result of your examination and investigation of them ?

A I found the four bullets,exhibits C, D, E and F,to be .32-caliber,rim fire,U.M.C.,Smart,black powder,complete cartridge bullets.

Q What do you mean by obsolete cartridge bullets ?

A That is they are bullets from a cartridge that I am unable to find now on the market. They were on sale from seven to ten or twelve years ago and are not now in the open market,except when found in collections. They there are on their base the intermixtures of the saltpeter,charcoal,sulphur,black gunpowder and not the modern smokeless and semi-smokeless imprints. That they have the commulring----

MR SMITH:-

Q What is that ?

A That is a lubricant groove that extends around the side of the rear of the cartridge that is filled with grease before it is inserted in the shell. And in the bottom of that groove are little cog like formations known as knurls, and those knurls have a shape and relative size and formation peculiar to the factory producing them. And the relation in distance between the different points of the side of the bullet in hundredths of an inch varies with the different manufacturers. The style of the base of the bullet in which, for instance, these four bullets have this kind of a base, there is around the outer edge of the bottom a section of a circle .05 of an inch wide, an elevated rim.

MR. MIRS:-If he knows what he is saying about it I submit he is the only one who does. I cannot follow it. I do not know whether he is talking about these bullets or where he is going. I ask to have the answer stricken out in its entirety as incompetent and irrelevant and immaterial and not a subject of expert testimony, and the witness stating everything he seems to have ever learned anywhere about something that has no bearing or relevancy here.

THE COURT:-He is stating something of his own knowledge and stating it because it is facts which must call for matters of inference. I think the answer may be stricken out and we will stick to the question and take up those things one by one. For example, the calibre of the bullets is something that anybody reasonably familiar with revolver cartridges could probably testify to positively, so he may say as to that if that was certain. Was it ?

MR. WHITE:-What is the question he is undertaking to answer ?

MR. [illegible]:-I asked him to describe what further he imported as to those four bullet [illegible].

THE COURT:-He is telling the jury that the man who shot Phelps had a box of cartridges which he bought seven or eight years ago, or which were at least manufactured seven or eight years ago. He is stating that as a fact. I think we better not go quite as fast as that. But as to the calibre let us see what there is about that.

MR. WHITE:-I hope you do not mean to have it in-

1 forced that was the fact, that he was saying was
2 he evidence of that fact ?
3 THE COURT:-I would not have stricken out his answer
4 or evidence if I had thought so. I struck it out
5 because I thought he was going too rapidly on
6 that point.
7 Q You can first describe the bullets ?
8 A Exhibits 37, 38, 39 and 77 are each 22-calibre, short, rim
9 fire.
10 Q How do you know they are rim fire bullets ?
11 A By comparing them with bullets and cartridges in my
12 possession, purchased by me in the open market nearly
13 seven years ago that are identical with these.
14 THE COURT:-I am afraid we will have to strike out
15 "rim fire" because there is not anything in the
16 nature of things that would prevent these bullets
17 being fired out of a center fire cartridge, is there?
18 A They could be put in, yes sir, and fired.
19 THE COURT:-We will have to strike that out. Tell
20 what you know. Do not undertake to follow up an
21 inference on your limited experience. We do not
22 want that. A man could go and have some cartridges
23 made if he wanted to.

You think they were made by the Union Metallic Cartridge Company. Nothing to prevent me making the same cartridge, or making some cartridge of my own that are like those of the Union Metallic Cartridge Company, provided I know how and had the necessary appliances.

Q Shall I give the measurements of the cartridges?

THE COURT:-Give anything that you think is material to the identification of these bullets that is observable to you or to me, or any other observer.

A The width of the elevation above the lubricant groove is .06 of an inch wide. The width of the lubricant groove is .06 of an inch wide. The width between the elevation below the lubricant groove and the next blind or narrow groove is .04 of an inch. The groove is .01 of an inch wide. I mean the narrow groove is .01 of an inch wide. The next elevation down to the crimping groove is .04 of an inch wide, and the rim between the crimping groove and the base of the bullet at the side is .01 of an inch. The total distance if those collection of measurements is .25 of an inch wide. The weight of the bullet from the side of Dr. Phelps 20.5 grains. The one from his arm 20.7 grains. The one from his head, the large piece, 24.7

and the smaller piece 4.0, total 20.1. The bullet from the side of Miss Wolcott weighs 20 grains, and upon this one over the front battered end of the bullet are embedded in the lead, too numerous to count, minute fragments of broken glass plainly visible under a high power microscope.

THE COURT:-Are you looking at one of these bullets, Mr. Smith?

Mr. Smith:-Yes.

THE COURT:-Just lay it on some flat surface and look at it in that way.

A Weight of the bullet from Miss Wolcott is 20 grains.

Mr. SMITH:-The observation "too numerous to count" seems to me should be stricken out at least.

A I was unable to count them.

THE COURT:-Yes, "too numerous to count" may be stricken out. The witness may state what he did with regard to counting them.

A The number was a matter of hundreds and I was unable to count the actual number.

THE COURT:-

Q Just with a microscope?

A Just with a microscope.

Q Fragments ?

A Fragments,really glass dust,although under the microscope they look like crystilized diamonds.

Q How do you know it was glass dust ?

A Technically I do not know until attempting to remove some and test it chemically. My present answer is based upon microscopic examination and not upon chemical analysis.

Q And by the appearance ?

A yes sir,and not on chemical analysis.

Q Anything else that looked like glass would have the same appearance ?

A Yes,that is to a,only with my added ability of verifying that I say with bullets having known glass upon it fired through glass.

MR. WHITE:-I ask to have that stricken out,with reference to finding or observing glass particles in this bullet,on the ground it does not appear that the witness is qualified to testify that particles he may have observed in a certain bullet are glass particles.

THE COURT:-He has not undertaken to positively say so. His answer may stand.

MR. WHITE:-If it is a guess I think then it should be not given.

THE COURT:-No, it is not a guess.

MR. WHITE:-It is a mere assertion.

THE COURT:-No, more than that. It is evidence with a qualification. The witness would not be positive about the matter until he had made a chemical analysis. What he saw had the appearance of glass but under the circumstance.

A That is correct.

THE COURT:-It is competent. That merely goes to the weight of the evidence.

MR. WHITE:-Exception

A And many of these [illegible] I have given the [illegible] of four bullets, but the entire collection is not made up of four. That is, some of the bullets are battered so the entire collection cannot be [illegible] by myself.

MR. WHITE:-I object to all of this last answer and ask to have it stricken out as incompetent, irrelevant and immaterial.

Motion denied.

Defendant excepts.

MR. [illegible]:-[illegible]

Q Do any of the other three exhibits outside of the exhibit [illegible] show any apparently plane particles as you have de-

scribed ?

A I was unable to discover on the other three exhibits,or bullets, substance that had the appearance of glass, or broken glass,or the substance,or whatever it was,upon the bullet XX.

Q Have you described everything in relation to these bullets ?

A I think I have covered the bullets,yes sir.

Q Assuming that that on exhibit XX was glass particles could you tell us how it could acquire that embedded in the lead bullet ?

MR. WITH:-That is objected to as incompetent, irrelevant and immaterial.

THE COURT:-I do not exactly like that form of question. I should say assuming that that bullet was testified to as having been removed from the body of Miss Holcutt was fired through this or through a glass,pane of glass,would you state whether that would be an adequate cause for the appearance of glass that on the bullet that you have described? I think I would allow a question in that form.

A I can so state.

THE COURT:-

Q That is,fired through the pane of glass before entering

the body ?

A I can state whether it was fired through a pane of glass, but not as to whether it was fired through this particular pane of glass.

MR. FRIEDMAN:-(Resumed)

Q What do you say, was it ?

A In my opinion it was fired through a pane of glass before entering her body.

THE COURT:-

Q The question was whether that fact, assuming it to be a fact, would be an adequate explanation of the discrepancies which you have described on the bullet ?

A It would.

THE COURT:-Mr. White, do not hesitate to object to any questions asked by the Court the same as if asked by the counsel. I would be glad to have you have the benefit of any objection that you may desire to enter.

MR. FRIEDMAN:-(Resumed)

Q Did you make photographs of the bullets and the muzzle of the revolver ?

A I did.

Q Have you them with you ?

A I have.

Q What size photograph ?

THE COURT:-He is going to produce them ?

Mr. [illegible]:-Yes.

THE COURT:-They show for themselves.

A I have one slightly enlarged showing---

Q One slightly enlarged of what ?

A Of the muzzle of the revolver,exhibit 68,showing the left hand side of the edge of the bore immediately under the sight,and then an enlargement of the same locality,and then one of the side view of the gun natural size,then another photograph of the two bullets existing in five pieces.

Q In these exhibits ?

A yes sir.

THE COURT:-

Q And these photographs of the bullets are not the natural size,are they ?

A The ones I am now describing I think are nearly the exact size. No,they are enlarged,yes sir. They are much enlarged. The first are a side view and the next is a much enlarged view of the side and end,the base end of the bullet from the side of Mr. Phelps. That was the entire list.

Mr. [illegible]:-(REDIRECT)

Q You took photographs of all

1 the bullets you say ?

2 A Yes,all four.

3 Q and of the muzzle of the revolver ?

4 A Yes sir.

5 MR BRIEF:-

6 Q Have you several sets of them ?

7 A I only have four. I did not have time to complete any

8 more. I have four mounted and two not mounted.

9 Q They are all the same ?

10 A Duplicates of the same.

11 MR. PRINGLE:-(MARKED)

12 Q Do the enlarged photographs of the revolver show the

13 defects that you have described here ?

14 A yes sir.

15 Q In your testimony ?

16 A yes sir. On page 5 and 6 of the album containing the pho-

17 tographs.

18 Q Does the enlarged photographs of the muzzle of the re-

19 volver ?

20 A yes sir.

21 Q Are these photographs correct and true representations of

22 the muzzle of the revolver and of the bullets ?

23 A They are,except they are enlarged with the exception of

the side view of the revolver which is the natural size.

Q That is the first picture ?

A Page 4.

Q Just turn to the enlarged photograph of the revolver. Point out in that photograph where the nine defects in the muzzle of that revolver are ?

THE COURT:-You better have the photographs in evidence first so we will see if there is any objection.

MR. FWICKEMEYER:-I offer the photographs in evidence.

MR. WHITE:-I object to the reception of the photographs in evidence on the ground they are incompetent, irrelevant and immaterial.

Objection overruled.

Defendant excepts.

MR. WHITE:-And not to have been shown to be true representations of the articles that they purport to represent, and have not been shown to have been made by the witness and developed by the witness, and no proper foundation laid.

THE COURT:-I understood him to say that he made them, but I may have overlooked something in that

1 regard.

2 Q Did you develop the photographs yourself ?

3 A I exposed them, developed them and printed them, and did

4 everything in connection with them myself.

5 THE COURT:-They may be received. I think they should

6 be marked separately, however.

7 Mr. WEIN:-Exception.

8 A I made four duplicates from the same negatives, pages

9 1 to 6 inclusive.

10 Q The first photograph, page 1, is what ?

11 A A photograph of the four bullets consisting of five

12 pieces arranged in the following order, the one appearing

13 in the picture to the extreme left is the one from the left

14 arm of Mr. Phelps; the second one is the one from the

15 left side of Mr. Phelps; the next two pieces, or three and

16 four, are the ones taken from the head of Mr. Phelps and

17 the last one is the one taken from the side of Miss Pol-

18 cott, all of them showing a side view.

19 MR. WEIN:-

20 Q How many times enlarged ?

21 A About nine diameters. That is, about nine diameters, each

22 of the bullets. That is, on page 1.

23 THE COURT:-That may be marked.

(Photograph referred to marked "Peoples' exhibit "JJ")

MR. [illegible]:-([illegible])

Q And on page 2 that is a photograph of what ?

A The same bullets, showing the base of them. The same magnification as page 1.

MR. KUCHLADOSKA:-I offer that in evidence.

(Photograph received and marked "Peoples' exhibit "KK")

Q And these photographs show the identification marks that you have testified to, do they not ?

A yes sir.

Q Some of them any way ?

A yes sir.

Q What does that photograph represent on page 3 ?

A That is a base end view of the bullet from the side of Mr. Phelps, enlarged sixteen and one-half diameters.

Q There are two photographs on that page ?

A It is the only photographic view which shows two views of the same point, a side and an end view of the same bullet.

Q And the same enlargement ?

A The same enlargement, whether the bullet is standing up

1 or lying down.

2 MR. FITZGERALD:-I offer that photograph in evi-

3 dence.

4 (Photograph received and marked"People's' exhibit

5 "LL")

6 Q At page 4 what is that a photograph of ?

7 A A side view of the revolver,exhibit 80,very slightly

8 enlarged.

9 THE WITNESS:-

10 Q It is practically the same,is it not ?

11 A It is,yes sir.

12 MR. FITZGERALD:-I offer that photograph in evi-

13 dence.

14 (Photograph received and marked"People's' exhibit

15 "MM")

16 MR. FITZGERALD:-(Handing)

17 Q Page 5 is a photograph of what ?

18 A The handle of exhibit 80,with it tipped slightly at an

19 angle so as to get a view of the defects previously

20 described by myself on the left hand side below the sight,

21 and this photograph is a slight enlargement.

22 MR. FITZGERALD:-I offer that photograph in evi-

23 dence.

(Photograph received and marked"People's exhibit "MM")

Q And the photograph on page 5 is what size ?

A The picture on page 5 is about two and one-half diameters enlargement.

Q Of NN ?

A Of the muzzle of NN.

Q Exhibit OO ?

A The muzzle of exhibit OO.

Q And the photograph on page 6 is a photograph of what ?

A The same muzzle enlarged about fourteen and one-half diameters.

MR. FULLERTON:-I offer that photograph in evidence.

(Photograph received and marked"People's exhibit "OO")

Q Are you able to point out in these enlarged photographs, either in exhibit MM or OO on page 5 and 6,the defects that you have described in the muzzle of that revolver ?

A I am.

Q Point one of them !

A On page 5 the two and one-half times diameter they are plainly visible to the naked eye along the edge as shown in the picture.

Q Where do you point that out ?

A They extend right along that edge, the extreme outer edge of the metal casing.

Q And they are the nine defects that you referred to this afternoon ?

A Yes sir.

MR. WHITE:-I do not think the witness has ever referred to these as defects.

Q Objections then ?

THE COURT:-I think the word "defects" should be changed to the word "objections". "Characterizations" probably would be the better word.

Q They were the defects, they were the characterizations or projections that you described as having made the marks on the bullets you testified to ?

A I dont think I was asked that question whether these defects made these marks on these bullets. I dont think I was permitted to answer any question of that kind.

MR. WHITE:-No.

MR. [illegible]:-I ask to have the jury see these photographs.

MR. WHITE:-Yes.

MR. WHITE:-I suggest that the jury may be permitted

to see the photographs.

MR. WHITEMORE:-Yes, that is all right.

THE COURT:-At any proper time.

A It would be a good plan to lay them on a cloth.

THE COURT:-There is no objection to Mr. Hamilton, who is accustomed to handling such things, laying them on something so they can be passed around ? Any way let him try it, and if you have not any objection to it let it go at that.

(Witness hands photographs of bullets to the jury)

A I have not handed to the jury the bullet, exhibit 10, from the left side of Charles E. Phelps.

THE COURT:-If I were doing it I would put one in the bottom of the box and hand that around so they can look at that. There is no use handling it that I know of. And then take that back and put it in the box. All you want them to do is to look at the bullets and look at the pictures sometime.

MR. WHITE:-I think they would get better information by looking at the bullets.

THE COURT:-It may be better but it would not be the same. They want all the information that they can get.

MR. SMITH:-Is I understand the Court is ruling that the jurors must not handle the ballots at this time ?

THE COURT:-Why, I have not been asked to make any ruling at all so I have not made one.

MR. SMITH:-I ask the jury be permitted to examine the ballots.

THE COURT:-I have not made any ruling now either. There is not any reason why the trial should be stopped just at this time for the jury to examine the ballots. At the proper time, of course, the jurors are going to take the ballots into their possession and examine them to their hearts' content. I do not want to interrupt the progress of the trial.

MR. SMITH:-I think the same rule should apply to the photographs.

THE COURT:-The witness just now happens to be testifying about these photographs and I do not want to interrupt the testimony in order to make the jury do something which they have not been asked to do, and which is not properly before them at this time. In due time there will be nothing kept from the jury. You may rely on that.

Q You are requested to show the jury the defects, or rather the characterizations that you testified to.

A On page 5 in the album it is that portion of the photograph which shows the rough projection or indentation upon the left hand side.

MR. MIRR:-I object to the procedure that is being followed. I object to the witness indicating on the photograph in the manner that he is.

THE COURT:-Objection overruled.

MR. MIRR:-Exception.

A The point I have referred to is at what appears in the photograph about where my pencil point is and extends down the left hand side to nearly the bottom, not quite, as covering the space of a groove and a land, and it is that roughened collection of projections or indentations that I have already described. Right along there. That I refer to right along there in this photograph. Right along there in this photograph.

(Witness shows photograph to the jury)

I have called the jurors' attention to what you referred to in the question.

Q Do any of these photographs of the bullets show any markings on them that you have described ?

1 A They do not. I think in all these cases they are upon
2 the opposite side of the bullet, or else upon one side of
3 the rear. They do not appear on page 1, the nine scratches
4 I referred to.
5 Q Can you point them out on these bullets ?
6 A I can point them out on the bullets themselves.
7 (Witness producing microscope)
8 THE COURT:-If you have to use a powerful microscope
9 upon them I do not think the jury can see through
10 your microscope.
11 A To some time.
12 THE COURT:-
13 Q How time how ?
14 A To show them very much faster. I will hold this small one
15 in my finger. I can hold it this way.(indicating) I have
16 now enlarged the size of the bullet in order a pocket
17 microscope, holding the bullet in my finger so as to show
18 the nine scratches previously described upon a land and
19 a groove. If the Court permits I will hand it so the jury
20 will see it. You find it on the paper two inches above
21 the glass, and it is those scratches running parallel.
22 MR. SMITH:-I object to the procedure that is being
23 followed. I make my objection to the procedure
being followed in the manner in which the witness

is directing the attention of individual jurors to something which he claims is to be observed upon some of these articles.

THE COURT:-I think I will sustain your objection at this time. It is quite a different situation than it was before. What he was showing them before was something plainly visible to everybody. All they needed was an explanation. They can take the glass and look at the bullets in the jury room if they want to to their hearts' content if there is no objection to it. I think it is unnecessary for the witness to demonstrate them. Proceed.

Q You were present when the body of Charles Phelps was exhumed and the bullet was taken out of his arm ?

A yes sir.

Q You have described that before ?

A Yes sir.

Q Left arm . And that time you saw the place where he was wounded in the hand ?

A I did. I examined all the wounds.

Q And one one in the chest ?

A yes sir.

Q What condition were those wounds in at that time ?

MR. GRIM:-That is objected to as immaterial, in-

relevant and immaterial.

THE COURT:-I do not know how he can answer the question. He can state what he observed, if he likes, if there is no objection to his doing that.

A I observed the hair---

MR. SMITH:-I do not understand what he is going to be permitted to say .

THE COURT:-I think I do. He is going to describe the condition of the hair, and skin, and bones, and skull about the entrance of the bullet.

MR. SMITH:-I desire to object to his being permitted to state that on the ground it is incompetent and irrelevant and immaterial.

THE COURT:-Objection overruled.

MR. SMITH:-Exception.

A The hair of his head surrounded the point of the bullet hole and was singed over an area of approximating an inch to an inch and a quarter in diameter, the greatest singing being at the bullet hole. There was no lifting of the scalp from the skull; there was no infiltration of powder smoke or deposit in between the scalp and the bone. The hole through the scalp, or through the skull, was through the thinnest portion of the temple bone about 50th of an inch

1 in thickness at the point of entrance of the bullet.
2 The hole was nearly circular, slightly irregular, caused
3 an additional fracture or breaking away of a small piece
4 of bone about 1/8ths of an inch wide and perhaps quarter
5 of an inch long. At the time of my observation I saw no
6 powder smoke upon the scalp in the hair.
7 MR. SMITH:-I object to the witness stating that he
8 did not see.
9 THE COURT:-Objection sustained.
10 Q Go ahead.
11 MR. SMITH:-I ask that he stated may be stricken out.
12 THE COURT:-It may be.
13 A I preserved a piece of the scalp surrounding this bullet
14 hole, and also a section of the skull surrounding this
15 bullet hole, they being removed for me by Dr. Segammond
16 subsequently were again examined by me. The wound in the
17 left side of Dr. Phelps the skin was clean except at the
18 very edge of the bullet hole was a rim approximating a
19 sixteenth of an inch wide surrounding the hole which was
20 blackened.
21 MR. SMITH:-
22 Q Are you testifying about the wound in the side ?
23 A Yes sir.

MR. WHITE:-I did not understand that that was properly contained in the District-Attorney's question.

MR. WINCHESTER:-I asked him about the wounds on Mr. Phelps.

MR. WHITE:-I assume if this is all in response to the same question my objection covers it, I suppose, but if he is now asking about another wound I want my objection to cover that question.

THE COURT:-That is all right so far as your objection is concerned. I think the question covered all the wounds. I do not want Mr. Hamilton to take up the time to testify to something that is not material as bearing upon his evidence. That is, the deceased's body was exhumed just after the killing, and we cannot very well go into a simple consideration of what caused a black rim around this wound in the chest. There may have been three or four for all that we know. The doctors have described the condition of the body at the time of the autopsy; they have described the powder stains, or the marks rather, which suggest powder stains, of course, and unless Mr. Hamilton has based some opinion on something he observed there at the time that he

has not told us about it is not necessary for him to enter into any description of the body because we have a fresher description from the doctors.

MR. [illegible]:-What I was going to get at was his opinion as to when the revolver was fired into his head how far the muzzle of the revolver was held from him.

THE COURT:-If that is what you want let us get through with the wound in the head. Strike o t all about the wound in the chest.

MR. [illegible]:-([illegible])

Q Is there any other combination of the wound in the head ?

A Nothing except I determined the relative position of the point of lodgment of the bullet at the base of the skull with the point of entrance in the temple bone,and a median line connecting these two points,and where it led from the base of the skull passing up and out from the hole over the temple bone to the extent where it would go to, projecting a straight line.

MR. WHITE:-I ask to have that all stricken out as perfectly apparent that he did not determine where it would go to up there as he pointed. And I do not think he determined on that occasion the

1 course from the point of contact to the point of
2 lodgment. I think he is stating an opinion, and I
3 ask to have it stricken out.
4 THE COURT:-I will let it stand for the present.
5 I do not know what he is going to deduce from the
6 observation. Proceed.
7 MR. WHITE:-Exception.
8 A Those were the particular things I observed as I remember
9 now.
10 Q From your examination of the wound upon the head of Mr.
11 Phelps, and as you have testified to, from the location
12 of the wound given by the coroner, and the doctors who
13 performed the autopsy, in court here, which you have heard,
14 and from the condition of that wound from the outside
15 as those doctors testified to it and as you observed it
16 as you have testified to, are you able to state at about
17 what distance the revolver was held from Mr. Phelps'
18 body when his head wound shot was fired ?
19 MR. WHITE:-That is objected to as irrelevant, in-
20 competent and immaterial, and not a proper foun-
21 tion laid, and the witness not shown to be qualified,
22 and observations made too remote from the time of
23 the infliction of the wound.

1 THE COURT:-Objection sustained.

2 MR. MAIL:-

3 Q Mr. Hamilton, from your examination of these bullets and

4 your investigations as testified to by you and from the

5 testimony of the doctors in this case, heard by you, re-

6 lating to the finding of the bullets and the cause of death

7 of Mr. Phelps, can you state with reasonable certainty

8 the nature of the weapon used with which these bullets

9 were propelled ?

10 MR. WHITE:-That is objected to as incompetent and

11 immaterial and irrelevant.

12 THE COURT:-I think I will sustain the objection

13 to that. It is wholly unnecessary to resort to

14 opinion evidence for that.

15 MR. [illegible]:-There does not seem to be any-

16 thing here that shows the bullets were fired from

17 any particular gun or any gun.

18 THE COURT:-You are not going to rest your case on

19 Mr. Hamilton's evidence, are you ?

20 MR. [illegible]:-No.

21 THE COURT:-We cannot go too far on opinion evi-

22 dence.

23 MR. [illegible]:-I will have to call him back the

1 [illegible] side,I [illegible].

2 [illegible]:-[illegible]

3 Q And did you make any examination of anything in relation

4 to this exhibit 10,the stick ?

5 A The mop handle,I did.

6 Q You found in your examination something on the mop stick,

7 did you ?

8 A I did.

9 Q What was it ?

10 A Two stains.

11 Q Where ?

12 A One that is large and one-half inches long and about quar-

13 ter of an inch wide,and is located nineteen inches from

14 the round end and twelve and one-half inches from the cut

15 end,and a second smaller stain about three and one-half

16 inches above that angle towards the cut end on the same

17 side of the stick. This second stain is not so distinctly

18 visible to my eye,and the second one is about an inch to

19 an inch and a quarter in diameter.

20 Q Is that marked anywhere ?

21 A The first stain I described has a piece of wood lining

22 showing the clear,elm wood

23 Q Just in the place you took out you described ?

1 A Yes sir. The stain itself is plainly visible to the eye
2 when the stick is held at an angle, with the light shining
3 towards you you can see it very plain.
4 Q Where is the other one ?
5 A The other one is just above the first on the side and
6 three and one-half inches only it is even.
7 Q Just below it ?
8 A. It is above it going towards the cup.
9 Q Towards the out end ?
10 A Yes sir.
11 Q What did you do to determine what these stains were ?
12 A I treated or tested them chemically.
13 Q Tell the jury what you did ?
14 A What I did or what I found ?
15 Q How did you do it and what did you do ?
16 MR. SMITH:-I object to the reception of any evi-
17 dence of what he did to any article that he may
18 have removed and which is not here or accounted
19 for. As I understand it he took a piece of this
20 handle and cut it out. It is not here and it is not
21 subject to contradiction. I object to it.
22 THE COURT:-He may tell what he did with it. Objec-
23 tion overruled.

M. Mirri-Examination.

A I tested this spot chemically first before I removed this portion; the portion removed was for a subsequent examination. My finding as to what this stain was composed of was made and finished before I removed any piece of lining from the stair.

Q How did you determine that ?

A By first applying a small quantity of a solution known as Richardson's Saline Solution, which is 4/10ths of 1% of sodium chloride dissolved in distilled water. After applying a small portion of that to this stain, and then removing that liquid upon a little microscope slide, permitting it to dry, but before drying it adding to it on the slide, not on the broom handle, two or three small crystals of chloride of sodium, and then evaporating it to dryness, and over that dried spot placing a small round glass microscope covered slide, and the space in between that little slide is covered, and that glass slide is then filled with glacial acetic acid until the air is excluded, and it is then again heated cautiously at a temperature just high enough to bring it to the boiling point of glacial acetic acid, and that heat is generally continued until it is evaporated again to nearly dryness, and it is

allowed to stand until it has completed its evaporation and is dry, then after waiting five or ten minutes it is placed under a compound microscope like the one I have here, or the one I have with a high power opening, that little area is examined for the presence or absence of crystals. Under the test of my process this little area is covered with a small rectangular crystal of a certain shape, a shape peculiar, when analyzed chemically, that has hemin crystals. Their only source is blood, and when through the first process just described I found and obtained the hemin crystals from this large stain, I knew that chemically I had been treating a stain that had in it blood, and I found that this stain did contain blood. By the same process I found that the irregularly smaller stain above previously described was also a stain containing blood.

MR. KIRKPATRICK:-That is all at present.

THE COURT:-We will now take a recess for five minutes. Gentlemen, you will remember the admonition heretofore given you not to talk about this case, nor allow anyone to talk to you about it during the recess.

(The Court announced after recess)

MR. BLACK:-

Q Mr. Hamilton you state there were how many lands and grooves on these bullets ?

A Five lands and five grooves.

Q And how many were in the barrel of the gun or revolver?

A Five lands and five grooves.

Q When a bullet is shot from a revolver do all the lands and grooves upon the bullet always correspond with the number of lands and grooves in the barrel of the gun from which it is fired ?

A Always.

MR. WHITE:-That is objected to as incompetent and immaterial and irrelevant,not as leading also.

THE COURT:- We have been all over it,have we not ?

MR. BLACK:-I wanted to ask him that one question, whether they corresponed.

OBJECTION OVERRULED.

EXCEPTION ENTERED.

A With one exception they always correspond when the calibre of the bullet is the calibre of the gun,but if a thirty-two be fired in a thirty-eight then it will not.

Q Do I understand your answer to be when the calibre of the bullet is the same as the calibre of the gun these grooves and lands will always correspond ?

A Right.

Q The number and the width between ?

A yes sir.

Q Except that the lands in the gun are produced as grooves in the bullet and the grooves in the gun are produced as lands in the bullet ?

A Right".

Q And they take the same position upon the bullet as the grooves and lands do in the gun ?

A yes sir.

Q Just the opposite ?

A Yes sir.

Q The grooves take the place of lands and the lands take the place of the grooves ?

A That is right.

CROSS EXAMINATION BY MR. WILKE:-

Q You are the Mr. Hamilton who gave John Rice the key down at Auburn ?

A yes sir.

Q Are you the Mr. Hamilton who sometimes styles himself "Walter Hamilton" ?

A I am not. I am sometimes styled that by other people.

1 particularly cross-examiners.

2 Q Have you ever styled yourself "Doctor Hamilton" ?

3 A Never. I have no right to.

4 Q And have you ever conducted a drug store at Auburn ?

5 A Yes sir.

6 Q Are you now conducting a drugstore at Auburn ?

7 A I do not.

8 Q For how many years did you conduct that drugstore ?

9 A Oh,I should say about twenty-five I owned it,but not per-

10 sonally conducted it all that time.

11 Q And that twenty-five years extended down to what time ?

12 A About between four and five years ago I think. That is,I

13 owned it. The personal conducting of it was a matter of

14 ten or twelve years ago.

15 Q You owned it down to four or five years ago ?

16 A Yes sir.

17 Q And since that time you have been there a great deal ?

18 A There,to the drugstore ?

19 Q Yes.

20 A No,it is extinct. It is not a drugstore. Yes,I have been

21 in the store because there is a postal station there.

22 Q Is there a drugstore in Auburn now known as the" Hamilton

23 Drugstore" ?

A Not that I know of.

Q How long since there has been to your knowledge a drug-store in Auburn known as the "Hamilton Drugstore" ?

A There was a Hamilton Drug Company there up to a year or two ago, I think.

Q Were you interested in that concern ?

A No sir, they were my successors.

Q Was there any person by the name of "Hamilton" connected with that company ?

A Only in this way: I was given one share of stock in that company, which I never saw, and I was to permit them the local use of the name in connection with their business.

Q And that situation commenced about how many years ago ?

A That I don't know. It was some months after I sold out my business to two young men who later organized the Hamilton Drug Company.

Q And prior to that time, with the exception of those two months, or few months, the young men were conducting it, who conducted the Hamilton Drugstore at Auburn ?

A I owned it.

Q And for some time before that two months occasion you had not given it your personal attention but you owned it ?

A I owned it but I had given it much attention.

Q Aren't you the Doctor Hamilton who prepared and sold and advertised Doctor Hamilton's cure for Consumption ?

A No. You have got to cut the"Doctor"off.

Q I asked you are you the Doctor Hamilton that prepred and advertised and sold Doctor Hamilton's Cure for Consumption?

A No,I never heard of that remedy in the first place,and I am not the man,and I never heard of such a remedy.

Q You have answered the question. Will you wait a minute ?

A I am waiting.

Q Are you the Hamilton who prepared,advertised and sold Hamilton's Cure for Consumption ?

A. I never heard of that remedy and I am not the man.

Q Have you ever prepared,advertised and sold a cure or remedy for consumption ?

A Not to my present knowledge.

Q You know whether you have or not,dont you ?

A I think so.

Q Have you ever ?

A I think not. I would be glad to have you refresh my memory.

Q Do you know whether you ever have ?

A I think I have not.

Q Do you know whether you ever have ?

A I wouldn't say this positively now,no.

Q Did you ever prepare,advertise and sell a remedy known as"Hamilton's Cure or remedy for Kidney Trouble" ?

A I think at one time I had a kidney remedy in my store under my name,but not a kidney cure.

Q And was that referred to as"Doctor Hamilton's Kidney Cure", or Kidney remedy ?

A Never.

Q And you did not refer to it as"Doctor Hamilton"s Kidney Cure" ?

A No sir.

Q And you did not use it for kidney trouble ?

A Never. You have been misinformed.

Q I dont want any of your comments. You answer my questions. I didn't ask you whether I had been misinformed or not.

A Oh,pardon me.

Q Did you ever prepare,advertise and sell what is known as "Hamilton's Syphilis Cure" ?

A I know of no cure for syphilis. If you ever had it you would know it.

MR. WHITE:-I ask the last part of the answer or remark be stricken out.

THE COURT:-Yes,strike it out.

A I know of no cure.

MR. WHITE:-And more than that, I want you to answer my questions and not add these comments.

THE COURT:-Do not talk to the witness. Talk to me.

MR. WHITE:-I think the last remark was slightly improper.

THE COURT:-The remark was unnecessary, but in asking him these questions ask him if he ever sold what was named or called a cure, because we know there is no cure for consumption. At least, no medical cure. But there was something that at one time was called Piso's Consumption Cure, for example, he may have sold that. I do not know whether he is restrained in the use of language or not. I suggest that you do not assume that these things are cures but merely ask him if he sold what was purported or styled a cure in these cases.

Q Did you ever assist in the preparation, advertising and sale of a commodity which was held forth and which purported to be a cure or remedy for syphilis?

A No sir.

Q Did you know of the Hamilton's Cure or Remedy?

A There never has been any such remedy to my knowledge.

1 Q Did you have a few years ago trouble with the Federal
2 authorities in reference to the sale, advertising and dis-
3 tribution of remedies ?
4 A No.
5 Q Any trouble of any name, kind or nature ?
6 A No sir.
7 Q Any complaint of that character charged against you ?
8 A No sir.
9 Q Were you directed by the Federal authorities to discontinue
10 the sale and distribution or advertising of any commodity ?
11 A Never, nobody never even approached me upon the subject.
12 Q This gun, this respondent exhibit 60, you hold in your hand
13 on your direct-examination, and you stated that the markings
14 that a bullet from the barrel of a gun received were re-
15 ceived at the outer end, or from the outer rifling of the
16 main barrel; is that true ?
17 A That is hardly what I stated as you have now interpreted.
18 Q Is it true ?
19 A I did not so state.
20 Q Did you state that a bullet got its markings from the
21 outer end of the barrel because that was the last point
22 that it passed, or that in substance ?
23 A A little different as you interpret it.
Q Tell me that difference then ?

1 A At the very edge of the muzzle of the interior of the
2 barrel at the point where the bullet last leaves the
3 interior of the barrel is the final markings recorded
4 upon the surface of the bullet.
5 Q Is it not a fact that a bullet gets its markings from the
6 smallest part of the barrel ?
7 A That is not the fact.
8 Q You do not admit that what I stated last is a commonsense
9 proposition ?
10 A I deny that is a fact in the shooting of firearms from
11 my experimenting and testing out that very thing. And I
12 am now referring to revolvers,not shot guns.
13 Q Referring again to the proposition of whether you had any
14 difficulty with the Federal authorities. Did this Hamilton
15 Drug Company to your knowledge have any ?
16 A I dont know anything about that.
17 Q You are a stockholder ?
18 A No.
19 Q You said you were ?
20 A I had assumed to know it. I never knew it. I have no
21 personal knowledge,simply what I was told.
22 Q Is this the tin box that you referred to as being the one
23 that contained the revolver and the bullets during the noon
hour down

there in your office ?

A I beg pardon. Is that the box ?

Q Yes.

A It is the box.

Q And you purchased a box for Mr. Rice ?

A yes sir.

Q What time in the forenoon did you purchase it ?

A I would not tell you that. Sometime between eleven and the time we went to lunch.

Q And did you leave the office there and go and purchase this box ?

A yes sir, left him in charge. I see no harm in that.

MR. WHITE:-I ask that the last part of the witness's answer be stricken out.

THE COURT:-Strike it out.

Q Were you connected with the trial of a man by the name of Bonham at Batavia some years ago ?

A The second trial, the time he was acquitted I was in the trial for the defense.

Q Were you examined as a witness ?

A Yes sir.

Q Did you produce there a syringe which you understood had been used by the Doctor's wife that he was claimed to

1 have murdered ?

2 A I did not produce it. It was produced but I did not pro-

3 duce it.

4 Q The defendant's wife instead of the deceased's wife.

5 Did you testify that particular syringe,or some part of

6 it,did you testify that on some partof that syringe

7 you were able to discover poooooni ?

8 A I did so testify,or that in substance.

9 Q Did you testify that you discovered on that syringe---

10 THE COURT:-Are you going into that to any great

11 extent ?

12 MR. WIKE:-No,not particularly.

13 Q Did you testify that you discovered on that syringe prussic

14 acid ?

15 A That was not what I testified. It was a little different

16 from that. I can give you the detail of it.

17 Q Answer yes or no if you please whether you testified that

18 you discovered on that syringe prussic acid ?

19 A That was not the way I testified. I testified about prussic

20 acid in that syringe,but not the way you have placed it.

21 Q You did testify that from your experiments and observa-

22 tions with reference to that syringe that you found that

23 substance was in it,or on it ?

1 A Yes,not in the form of prussic acid though.

2 Q Was the defendant charged with having poisoned his wife

3 with the use of that acid ?

4 A He was.

5 Q And he had been tried once ?

6 A Yes.

7 Q And did this evidence with reference to this syringe,

8 had that evidence been offered upon the first trial ?

9 A It was not.

10 Q And had this evidence with reference to this syringe been

11 offered upon the first trial ?

12 A It was not. It was not known about on the first trial.

13 Q And the time that you gave that testimony how long had

14 the defendant's wife been dead ?

15 A That I do not know. I know nothing about that.

16 Q Was it a number of years ?

17 A That I do not know.

18 Q Dont you know how long it was understood since that syringe

19 had been used when you gave testimony,how long after it ?

20 A I know nothing about any of the testimony. I know what I

21 found and I can tell you that now from memory.

22 Q When you were testifying in reference to that syringe

23 didn't you know how long or how old it was ?

A I told how old it was from the marks on the syringe, the manufacturer's marks, on the edge of the syringe it was printed, or it was stamped with an impression stamp in a metal spot, and I was familiar with the manufacture because I bought hundreds of them and knew their markings.

Q Then you testified with reference to that didn't you know how long this Mrs. Denham had been dead ?

A I did not except from hearsay.

Q How long was it from hearsay ?

A About the same date, or within a few days of the date of the defendant present I furnish that was wrapped around the syringe when it was brought to me.

THE COURT:-We are not re-trying that case and we do not know anything more about it than we did before you answered that question. You heard that she had been dead one or two or three or four years, or whatnot ? What was it ?

A I cannot tell you from memory whether she had been dead two or four or five. I do not remember that. I may have known it at the time, but I do not know it now.

Q After she died the defendant was arrested and tried and convicted and his case went to the Court Appeals and another trial was ordered ?

1 A Right.

2 Q Powes convicted and another trial was ordered and you

3 testified on the second trial ?

4 A Yes,at the request of his mother.

5 Q And you testified that in that time you discovered this

6 gonococci in this syringe ?

7 A Yes,along with more others I did. We all did.

8 Q I asked you if you did ?

9 A Yes,that is right.

10 MR. WHITE:-I ask to have"with three others"stricken

11 out.

12 THE COURT:-It has been said. Let it stand.

13 MR. WHITE:-Exception.

14 Q Dr. Hamilton,you have testified in a large number of

15 murder cases ?

16 A Quite a good many. Quite a few.

17 Q And in different states ?

18 A Yes sir.

19 Q Will you tell me whether it is a fact that you have an

20 arrangement with the District-Attorneys throughout this

21 state and elsewhere to the effect that you will not engage

22 yourself to the defense in a homicide case,or a murder case

23 until the District-Attorney has had an opportunity to en-

1 gave you ?

2 A I am controlled by one arrangement only, and it is not

3 that. I have no such arrangement.

4 Q It is slightly different ?

5 A It is different from that, you sir; quite different.

6 It has nothing to do with the District-Attorneys.

7 Q You remember the Kisley trial in Herkimer in 1911 ?

8 A Fairly well.

9 Q Did it develop upon that trial and were you confronted

10 with proof that you had offered your services as an ex-

11 pert to both sides in that case ?

12 A There was nothing of the kind developed there, sir. Noth-

13 ing of the kind. Nothing even that could be suspicioned

14 of that kind.

15 Q How many days have you been engaged on this case ?

16 A I do not know.

17 Q Will you give us some idea how many ?

18 A I will be glad to if I can, but I do not know.

19 Q You are engaged today ?

20 A Yes, [illegible].

21 Q You were engaged yesterday ?

22 A Yes.

23 Q How many other days this week were you engaged ?

A I think since Tuesday night. I have been here since Wednesday morning.

Q So there is Wednesday, Thursday, Friday and Saturday ?

A Right.

Q That is four days ?

A Yes, right.

Q Were you engaged any last week ?

A I cannot tell you from memory. I do not know. I think not though.

Q Were you engaged any the week before ?

A I couldn't tell you off-hand. I have too much on my mind.

Q You are a busy man ?

A Somewhat.

Q You were here when Professor Sy was here ?

A That day ?

Q Were you here when Professor Sy was here ?

A That he came to examine the exhibits ? Yes, I was here.

Q That was the week before last ?

A I think so. I can tell you definitely.

Q You were engaged the day Mr. Rice was down to Auburn ?

A Right.

Q You were engaged the day you went up to the Fort Smith Cemetery ?

A Correct.

Q You were engaged the day you went to Mr. Lehrman's ?

A Right.

Q You were engaged on an occasion when you made these experiments or observations? You were here with the sheriff how many days ?

A I cannot tell you all the dates.

Q Did you testify on your direct-examination it was seven ?

A I think I said one to seven inclusive.

Q I reckon the days that you have acknowledged as having been engaged at Lehrman, were you here engaged that many days ?

A If you say so I will accept it.

Q You expect pay for your services for every day you have been engaged ?

A I certainly do. I am not here for my health.

Q Are you going to give us how many days you have served, are you going to guess how many days you have served when you present your bill ?

A I shall be careful when I present my bill and get the correct number .

Q Are you going to guess how many days you have served when you present your bill ?

A I shall be careful I say when I present my bill and get the correct number.

Q Now do you expect to be then if you are not quite sure on this business ?

A I ought to be.

Q How much are you to receive per day for your services in this case ?

A I should expect to take my portion. Whatever the Board of Supervisors see fit to give me per day with me.

Q You mean that if they do not audit your bill at the amount that you present that you are not going to protest against the county ?

A No, that is not what I say and that is not what I even intimated.

Q Will you tell us what arrangement you have with the sheriff or the Dis rict-Attorney with reference to your being paid for your services in this case ?

A None.

Q You have been engaged ?

A I have been sent for by the District-Attorney subject to the orders of the Court.

Q Subject to the orders of what court ?

A The court before whom this case would be tried, whoever it happened to be. I am subject to his orders and no one

else's.

Q What do you mean ?

A The Court who presides over the trial.

Q What do you mean by being subject to his orders ?

A He is the one who says that the bill shall be when I have charged it and no one else.

Q That may be true whenever there is an order,but the amount that you shall present ?

A I do not know just if it will be passed.

Q What arrangement have you with the District-Attorney or the Sheriff with reference to being paid for your services in this case ?

A None.

Q By them were you engaged to testify in this case ?

A The Dist-rict-Attorney,Mr. Eulenberger.

Q And where ?

A Over the long distance telephone.

Q Will you relate the conversation ?

A That transpired ?

Q Yes.

Q I think it was very brief.

Q Let us have it ?

A "Come to my office as quick as you can get here".

1 Q And when was that ?

2 A Immediately preceding my first---I do not remember the

3 date. I think it was April 30th. I think I was in Utica

4 at the time,the Hotel Utica,on another murder case,as I

5 recall it.

6 Q Did you come as fast as you could get here ?

7 A No sir,I did not.

8 Q You waited until that time ?

9 A Why be the District-Attorney will tell you.

10 Q But you did get here ?

11 A After a time.

12 Q And did you have some further talk with the District-

13 Attorney about your compensation when you got here ?

14 A I dont think there was a word said about it. As I recollect

15 it there was not a word said.

16 Q Was there anything said about your being engaged to testi-

17 fy and co-operate in this case ?

18 A No,that was not what he asked me.

19 Q I asked you if there was anything said about those sub-

20 jects ?

21 A No,not those subjects. That was not the subject of our

22 talk. We talked but that was not what we talked.

23 Q I asked you if you talked that ?

1 A No.

2 Q Have you ever had any talk with the sheriff or the Dis-

3 trict-Attorney about your being compensated in this case?

4 A No,not with either of those people.

5 Q Have you had any talk with anyone whom you thought was

6 in authority to contract for your services in this case ?

7 A No,because that is the Board of Supervisors and I do not

8 know who they are.

9 Q Who told you whether the Board of Supervisors were to

10 do it ?

11 A The law.

12 Q Can you tell me where there is anything in the law to

13 that effect ?

14 A I found that by experience once when I sued a county for

15 my pay.

16 Q Can you tell me where there is anything in the law to

17 that effect ?

18 A I think so.

19 THE COURT:-

20 Q I suppose that was when you presented a bill to a county ?

21 A Yes sir,and sued them and found out the facts.

22 Q You are going to present your bill to this county,I sup-

23 pose ?

A Yes sir.

Q Tell him that the charge is going to be, or the rate of charge, and let us get on with this ?

A The rate will be that allowed by the Board of Supervisors wherever I have before ever presented bills, and that is $20.00 a day and my necessary disbursements.

MR. WITTS-[illegible]

Q $20.00 a day ?

A Yes sir.

Q In this case you are not going to receive more than $20.00 a day ?

A That is all I expect.

Q That is all you are going to demand ?

A Surely.

Q Absolutely ?

A Sure. Could be foolish to give any more.

Q You dont think your services are worth any more ?

A No, that is not it, but that is what they allow. I can ask a thousand but they allow that so I charge it.

Q Stop talking. Do you remember a case of the death of a physician in Utica when a nurse was arrested charged with the killing of the physician ?

A Yes, I can give his name if you wish it.

1 Q Whose name ?

2 A I can give you the name of the physician if you wish it.

3 Q And in that case a preliminary examination was held

4 before a committing magistrate at Utica ?

5 A Yes sir.

6 Q That is as far as that ever went ?

7 A I think so.

8 Q The analysis would not hold to await the action of the

9 grand jury ?

10 A I do not know.

11 Q In that case the Judge told you from the bench that he

12 would not believe you under oath ?

13 A Nothing that would even sound like that was said by him.

14 Q . Did you testify in that case,Doctor,that you found volatile

15 poisoning in the intestines of the Doctor after you had

16 made your examination,and he having been dead and buried

17 and embalmed for over a year ?

18 A I did not so testify,or anything that would even resemble

19 what you have asserted. I can give you exactly my tes-

20 timony if you wish it.

21 Q I asked you a question and you answered it.

22 A Yes sir.

23 Q That will do for the present. I show you"People" exhibit

JJ" ?

1 A I have looked at it.

2 Q You recall on your direct-examination looking into the

3 muzzle of this gun and in response to the Court's quest-

4 ioning you looking with your microscope, you undertook

5 to tell him the altitude of these characterizations or

6 marks that were in that gun ?

7 A I might. I remember making a wrong estimate, yes sir.

8 Q You recollect what you said the altitude was ?

9 A I remember my estimate.

10 Q What was it ?

11 A As I recollect it 1/100th of an inch.

12 Q 1/100th to 2/100ths of an inch ?

13 A Yes sir.

14 Q According to People' exhibit "JJ", do you remember on your

15 direct-examination having that in your hand and the Court

16 asking you if these photographs were the exact size of

17 the bullets and you answering they were ?

18 A Yes.

19 Q And then asking to have the bullets shown to you and meas-

20 uring and measuring them ?

21 A I think possibly I did through inadvertence that my mind

22 was on something else.

23 Q And this exhibit, this photograph, was right straight in

1 Sent of you ?

2 A Sure. My mind was on something else though.

3 Q And your mind being on that something else so long that

4 it was necessary for you to get this bullet and have it

5 delivered over here to you and set them side by side to

6 determine whether these were the same ?

7 A No sir.

8 Q You did that ?

9 A That was not what I got the bullet for.

10 Q You did it ?

11 A Yes.

12 Q And when announced to the Court it was not the same size ?

13 A I think that all took place.

14 MR. SMITH:-I desire to call the jury's attention to

15 the size of the bullets in that photograph in con-

16 nection with the testimony.

17 Q Did you ever study photography ?

18 A Yes.

19 Q Where did you study photography ?

20 A In my office.

21 Q You can be properly characterized as an educated man, can't

22 you ?

23 A I do not know that you would style me. I do not know that

1 I would style myself. I never have given that much thought.
2 I simply give my experience.
3 Q You say you do not know what you would characterize
4 yourself ?
5 A No.
6 Q How long ago was it that you edited a pamphlet with your
7 picture on the outside of it and some reading matter
8 inside and the pamphlet was entitled"Sherlock Holmes Out-
9 done" ?
10 A I never heard of such a pamphlet.
11 Q Is there not such a pamphlet in existence ?
12 A No Sir. That is some hodge-podge version, I imagine, some-
13 thing foreign to what you are not talking about.
14 Q And if I produced a pamphlet with your photograph on the
15 outside and the pamphlet entitled"Sherlock Holmes outdone"
16 and the pamphlet containing a narrative of your exploits
17 over a good many years,and satisfied you that you did
18 edit it,you will admit it,wont you ?
19 A If you will show me something there——
20 Q Answer my question ?
21 A I will admit anything that is a fact.
22 Q Will you admit that if I conform to the propositions I
23 suggested,will you admit that you edited it ?

1 A I will admit anything that is true, otherwise not.

2 Q Did you ever see this "Sherlock Holmes Outfit" ?

3 A That is new to me.

4 Q With the story of your exploits ?

5 A That is a new brick.

6 Q You testified with reference to this gun that the smoke

7 and vapors and so forth after an explosion would pass out

8 the muzzle ?

9 A Right.

10 Q Did you experiment with this gun to determine that fact ?

11 A Not in firing it. I examined the gun.

12 Q And you undertake to say that from the examination of the

13 gun that you made that all the vapors and the smoke would

14 pass out the muzzle ?

15 A Theoretically not every single particle of the fire pro-

16 duct will come out the muzzle.

17 Q Actually will it ?

18 A Actually the major portion of it comes out the muzzle.

19 Microscopically very little could escape through the sides.

20 Q You are the only one that understands microscopically so

21 I wont go into that. Have you ever had any cartridge

22 into the chambers of that revolver, exhibit (8) ?

23 A None.

1 Q Have you cleaned this gun ?

2 A I have.

3 Q How times ?

4 A Quite a few. I do not know how many.

5 Q Have you revolved this revolver ?

6 A Yes,a good many times.

7 Q And those operations would have a tendency to remove rust

8 that was in or on those parts ?

9 A No,I do not think it would.

10 Q You think not ?

11 A I think not.

12 Q If I understand you correctly you have not produced here

13 a photograph of these bullets showing the marking that

14 you have described ?

15 A I have not.

16 Q When the Court asked you where these markings were shown

17 on the photograph on these bullets I recollect that you

18 said that the markings must be on the other side of the

19 bullets,is that correct ?

20 A I suggested that they were.

21 Q On the other side ?

22 A I do not think I used the word"must". I stated they were

23 on the other side.

1 Q Wouldn't it have been highly possible for you to produce
2 a photograph with the other side showing ?
3 A It is better to let the jury see the actual bullets them-
4 selves, and I am now ready to let them see, if you wish to
5 have them see it, see the whole of it.
6 MR. WITTE:-I ask to have the last part of the an-
7 swer stricken out.
8 Q You did not undertake to produce a photograph showing
9 the sides of those bullets that had the markings on ?
10 A Yes, I did not even try to.
11 Q Will you give me your attention ?
12 A I am listening every minute. Go ahead.
13 Q You mentioned the characteristics or bulges on the head
14 of a gun barrel as the sure way of locating ridges ?
15 A I did not characterize them.
16 MR. WHITE: Lands.
17 Q Is that right ?
18 A Lands and grooves. L-a-n-d-s.
19 Q Did not the question suggest lands to you ?
20 A Not at all. I thought you were referring to the injury
21 in the muzzle from your expression.
22 Q You undertake to give the dimensions of the lands and the
23 grooves in Peoples' exhibit "GG" ?

A I do give them.

Q You suggested that they were there ?

A Yes sir.

Q The measurements ?

A Yes sir.

Q Will you state what those measurements were ?

(Witness examines book)

A The lands measured across their top in exhibit "GG" .06 of an inch, and the grooves .07 of an inch.

Q Those are quite minute measurements ?

A Yes, they are nin to measurements in hundredths. There are not any measurements in thousandths. At least I have not given any.

Q You can get it finer than hundredths ?

A Only in larger guns. I have not in this one.

Q How do you go about measuring lands and grooves ?

A By microscopical measurements, or microscopical examination of the muzzle of the gun looking down into it.

Q Those measurements that you make, Mr. Hamilton, are segments of a curve, are they not ?

A No sir, they are chords of arcs.

Q You measured the chords of arcs ?

A Right. They are not sections of a cylinder.

Q Will you tell this Jury

here whether or not all the marks, indentations and grooves and bulges or projections upon these bullets, all of them, might not have been caused by coming in contact with the bones and the flesh of the bodies from which they were taken?

A The answer is yes and no. Some of the marks produced upon these bullets were caused by contact with bones or through the cartilages.

MR. SMITH:-I object to the answer and ask to have it stricken out.

THE COURT:-Strike it out.

(Question read by the stenographer)

A All of them were not caused by contact with bones.

MR. SMITH:-I ask to have the answer stricken out.

THE COURT:-Strike it out. Ans wer his question.

He is asking you a hypothesis whether these marks might not have been caused in the way he suggests, all of them.

A If I understand correctly, in my opinion they could not have been caused by such contact, such contact with--

THE COURT:-Do not qualify it. Just answer the question yes or no if you can. Might they have been caused by coming in contact with the flesh and bones

of the body from which they were taken ?

A Many of them could have been so formed.

Q Might they have been so formed ?

A No.

Q You want to stand upon that proposition ?

A That is what I say.

Q Can you tell me how there could be any difference in the effect upon a bullet resulting from coming in contact with the bones and flesh of a body, or coming in contact with these microscopic projections that you have discovered in the barrel of this gun ?

A I do not think I can answer that in that form without volunteering something.

Q You find certain marks on these bullets ?

A Right.

Q Your contention is that these marks were caused by passing over and coming in contact with these projections or bulges that you have found or observed in this gun ?

A In exhibit "HS", yes; right.

Q Might they not have been caused equally by coming in contact with any other substance or matter anywhere ?

A No.

THE COURT:-
Q He is talking about these scratches now.

A The nine that I have referred to ?

Q Yes.

A My answer is no.

MR. WITZ:-[continued]

Q In other words, these particular marks, projections, that you have discovered in the muzzle of this gun are the only projections or obstructions that could cause these marks upon these bullets ?

A In the arrangement that I found them, yes. This gun only.

Q And a file could be taken or a pin, or a knife, and these marks be made upon these bullets ?

A It would be impossible to do it by hand pressure.

Q What were the marks made on on the bullets ?

A Any scratches of the lands in the muzzle of the gun.

Q You can describe them in another way from merely--you have described them here, have you not, as fine lines on the bullets ?

A Running parallel. Not exactly as fine lines, no.

Q I understand that they are were lines or cuts or cuts in the bullets arranged in a certain way ?

A They are lines and depressions and elevations in a series running parallel with each other lengthwise of the bullet in connection with the twist of the gun on the bullet.

Q You attempt to say that they could not have been inflict-

ed upon those bullets with a pin or a knife or an instrument ?

A Impossible to inflict them in the way you suggest.

Q Enough to say that one might undertake to inflict them ?

A In my opinion in no way could they have been inflicted and present them in the shape of the gun here and have them fit so nearly the defects in the gun.

Q Dont you think a trained expert, after having claimed to have observed certain things in this muzzle and eliminated certain things, could take these bullets and place upon those bullets some that would indicate that they had passed over those substances or projections in the muzzle of that gun ?

A It would be a physical impossibility for the best expert I ever heard of to duplicate the markings that are upon these four bullets.

Q Hasn't anyone said they are exactly duplicated but yourself up to this time in this court room ?

A I have just stated my opinion that I do not think it would be possible for an expert to do that. I could not duplicate them.

Q You are stating that over rather than answering my question ?

A No, I was not.

1 Q I asked you a question and you went on saying something
2 else instead of answering ?
3 THE COURT:-Whatever reason you may have for cor-
4 recting the witness I do not think you can hardly
5 say he is inattentive. He is attentive. May not
6 be responsive.
7 Q Doctor,you--
8 THE COURT:-Do not call him"doctor"for he says he is
9 not one. That is a nickname.
10 Q Dr. Hamilton,you stated on your direct-examination,I be-
11 lieve,that this condition that you discovered in the
12 muscle of this gun,the condition of indentations and pro-
13 jections,these bulges and holes,might have been caused
14 in three different ways. Is that right ?
15 A Right.
16 Q And you mentioned those three different ways as accumula-
17 tions of rust or deposits ?
18 A No,that is not what I said.
19 Q I will waive that.
20 A Not accumulation or rust.
21 Q Deposits ?
22 A By a rusting process.
23 Q A rusting process ?

A yes sir. It has an appearance so.

Q And is there a distinction between accumulation of rust and rusting process ?

A possibly a difference.

Q You say now that they might have been caused by a rusting process ?

A Right.

Q You did actually say that they might have been caused by improper cleaning ?

A Right, coupled with rusting.

Q Your did acknowledge that they might have been caused by improper cleaning ?

A Right, coupled with rusting.

Q You do acknowledge that they might have been caused by inserting some metal in there and striking against it ?

A Right, coupled with rusting.

Q And you acknowledge they might have been caused by improper cleaning ?

A Coupled with rusting.

Q And you do not know, and do not undertake to say how many million guns there are in the breadth and length of this land that are alike in their original formations, shape and style of barrels, from one or more of these causes ?

A That is right. I do not attempt anything of that kind.

1 Q You have admitted most everything else,have you not ?

2 A No,that is wrong.

3 Q You are a handwriting expert too,are you not ?

4 A You asked me to qualify me.

5 Q You qualify yourself,dont you,by what you say ?

6 A I tell what I know and they determine whether I am or not.

7 Q But you qualify yourself and then the courts as you say

8 render a decision as to speak ?

9 A They are the ones who say that. I do not.

10 THE COURT:-Do not spend too much of the time over

11 that. Just look at that card on the photograph

12 Q Will you read it please? That is your card on there ?

13 A Right.

14 Q Will you please read it ?

15 A Prepared by Albert S. Hamilton,analytical chemist,micro-

16 scopist,examiner and detector of questioned documents,

17 typewriting,ink stains and court exhibits generally,

18 Queens,N.Y.

19 Q That card indicates some part of your scope of activity ?

20 A Right.

21 Q Did you photograph the other side of each of these bullets

22 other than the one side that shows in the photographs ?

23 A I did not. I did not even think of it.

1 Q That never occurred to you ?

2 A No sir.

3 Q You did not think that would have any bearing ?

4 A No sir, the bullets themselves.

5 Q You wanted to show us the photograph of the smooth side?

6 A No sir.

7 Q That is all that you did now in your photograph of the

8 smooth side ?

9 A I simply photographed the side that would show the shape

10 of the bullet.

11 Q Take that photograph. I show you People' exhibit JJ",

12 note that, were these bullets all photographed at the

13 same time ?

14 A They were not. They were not all on one negative as shown

15 in this picture. They were photographed separate and

16 then the prints put on a paper and re-photographed so to

17 put them on in one row.

18 Q You dont mean to say that you re-photographed your pho-

19 tographs of the bullets ?

20 A Yes, that is exactly what I mean to say.

21 Q Then this is a photograph of a photograph ?

22 A Part of it is and part is not.

23 Q That is Peoples' exhibit "JJ" ?

A That is People's exhibit "JJ" re-photographed so to get the four all on one.

Q It is, is it ?

A That is right.

Q You testified on your direct-examination that that was the photograph of the bullet, did you not ?

A Yes, that is correct.

Q That is a photograph of a photograph of the bullet, is it not ?

A It is both.

Q It is not the first if it is the latter ?

A That is true.

Q It is not what you testified on your direct-examination it was ?

A It is exactly what I testified to. Both are correct.

Q You were talking about observing some microscopic particles of glass in a bullet ?

A Yes.

Q And you said that you could only conclude that it was glass,-these very fine, sand-like particles, you could only conclude it was glass by looking through the microscope ?

A A little more than that. My conclusion was based upon a little more than that?

1 Q Yes. Perhaps I will get an answer to this next question.
2 You did not make a chemical analysis of the particles ?
3 A Not of this exhibit,no sir.
4 Q You said that if you did make a chemical analysis you
5 could determine to a certainty whether they were glass
6 particles ?
7 A Terminally,yes .
8 Q How would you go about to make a chemical analysis of
9 glass particles ?
10 A Removing some of these particles and treating them sepa-
11 rately with nitric acid,hydrochloric acid,sulphuric acid,
12 to see whether any reaction was established,if the particle
13 was soluble; fusing it to see if it would fuse,treating it
14 with hydrofluoric acid and so change to destroy it and
15 evaporate or fuse it with an alkaline paste to determine
16 whether it was silica or alumina,and if the particle was
17 large enough to treat at all see if it were a lead glass
18 or a calcium glass. These particles are not large enough
19 for such a test,so with those two tests I would know
20 whether I was dealing with a fust,glass or quartz,or some
21 crystalized substance that was soluble in one or more of
22 these acids. If it was glass it would be soluble in
23 hydrofluoric acid.

1 Q And after saying that you would be entitled to say
2 whether you had been treating glass or sand or cement,
3 is that so ?
4 A I would know at once it was not cement.
5 Q How did you come to know that it was not sand ?
6 A You would know at once you were not dealing with earth
7 from going that far, and going that far you would know
8 whether to proceed farther.
9 Q Then you would proceed farther ?
10 A Yes, that is right.
11 Q Do you recall the Reagins case tried at Patria ?
12 A Very well.
13 Q You testified over there ?
14 A I did.
15 Q Do you remember your attempting over there to get an
16 explosion from a mixture of potassium of chlorate and
17 nitric acid ?
18 A I remember of getting an explosion. I do not remember of
19 the attempt part of it.
20 Q You remember of getting an explosion ?
21 A Yes, as I recollect I obtained it in the presence of Pro-
22 fessor W.
23 Q Would you get an explosion from a mixture of potassium

1 of chlorate and nitric acid without the interposition of
2 an organic substance ?
3 A You would not.
4 Q You would not, would you ?
5 A I do not expect to.
6 Q Didn't you testify over there that you could and would ?
7 A No.
8 Q And didn't you attempt to ?
9 A No. You have got that very badly mixed. Very badly
10 mixed. That is not what I testified or attempted to testify
11 Your expert can correct you on that. He was there.
12 Q You attempted that experiment in court ?
13 A Not what you have stated.
14 Q You attempted the experiment of getting an explosion with
15 a mixture of potassium of chlorite and nitric acid, did you
16 not ?
17 A I do not recall anything of that kind. I might have done
18 it to show that it would not explode, something like that.
19 But at this time I unable to make them explode.
20 Q Answer this question. Weren't you trying to demonstrate
21 that you could get an explosion from a mixture of potassium
22 of chlorite and nitric acid, and didn't you fall until
23 with your knife, when you were mixing those chemicals

1 on a board on the floor, or some board, did get something
2 dim into the mixture which gave you an explosion,
3 an organic substance so you could get an explosion ?
4 A No sir.
5 Q And weren't you called down for it ?
6 A No sir.
7 Q After having done so ?
8 A No sir.
9 Q And weren't you attempting a trick upon the court ?
10 A Nothing of the kind, sir. Nite; nothing of the kind. Not
11 even anything like it.
12 Q When you did touch it with your knife you got something
13 into that mixture that gave you an explosion, didn't you?
14 A No sir, nothing of the kind occurred.
15 Q You know now whether a mixture of potassium of chlorate
16 and nitric acid will make an explosion ?
17 A I know whether it will or not.
18 Q Will it ?
19 A It will not.
20 Q You didn't know that then when you went on the stand over
21 to Batavia ?
22 A I certainly did know it from my hundreds of experiments
23 both with and without other ingredients.

1 Q When you had a good knife and a foreign object ?

2 A No sir.

3 THE COURT:-This is all collateral and the evidence

4 of the witness is controlling on it, so unless you

5 can get him to admit something of an outrageous

6 character you better not go into it.

7 MR. WITT:-We are not keeping all these things.

8 I did not expect to get much of an admission from

9 him.

10 Q You know what glass is made of ?

11 A What kind of glass ? There are several kinds.

12 Q The glass which was in that bottle ?

13 A Yes sir.

14 Q Tell us ?

15 A I think I know what it is made of.

16 Q Tell it.

17 A Sand, calcium, hydrate and a little carbonate of salt soda,

18 commonly called carbonate of soda. That is, if this is

19 what I think it is, the main glass. If it is the kind of

20 glass I think it is these are the three principal ingre-

21 dients in it. There may be a little manganese oxide for

22 a purifying purpose.

23 Q Mr. Hamilton, that you referred to as Richardson's saline

1 solution is nothing but common salt solution, is it ?

2 A That is right, discovered by Dr. Richardson of Philadelphia.

3 Q Your answer covered that term "Richardson's Saline Solution"

4 in your examination ?

5 A Yes sir. Well known standard solution, recognized as

6 standard.

7 Q Common salt solution ?

8 A Right. The best known solution for dissolving blood.

9 Best recognized solution.

10 Q How many years is it since you were in common school ?

11 A It is a good many years, right on the farm at the home

12 of my father.

13 Q They taught chemistry in the common school down there near

14 your father's farm ?

15 A Yes sir.

16 Q A man couldn't go very far as a chemist on what you

17 would learn about chemistry in the best common school

18 in the City today, would he ?

19 A That I do not know. I do not know how far he could go.

20 Q You claim to be an analytical chemist ?

21 A Your first question was an entirely different thing.

22 That is on common school.

23 Q A man would not be much of a chemist after he took a

course of chemistry in the common school in the State of New York today?

A It would differ very much with different pupils, very much.

Q You were an apt pupil?

A No, I do not know as I was. I am inclined to think I was not.

Q And after your common school education in chemistry you had some private tutoring?

A Yes.

Q Over what period of time did that extend?

A I cannot tell. That was over a period of several years.

Q Pay money for it?

A Part of it was free; didn't cost me anything.

Q And consequently not money?

A Part of it cost me money. That that I got in New York City cost me money.

Q What was the name of this School of Pharmacy that you attended?

A It is now called the Department of Pharmacy of the Columbia University. Then it was the New York College of Pharmacy, the time in question.

Q You mentioned it being the Columbia University to give it a little influence?

1 A No sir, it was absorbed by the Columbia University. It
2 would not in any manner affect my reply a particle.
3 Q You do not claim any degree in pharmacy in Columbia
4 University ?
5 A Nothing only what I have already stated.
6 Q None by the Columbia University ?
7 A None by the Columbia University.
8 Q You did not mention the Columbia University for the in-
9 fluence it might have before the jury and to give them a
10 false impression ?
11 A I did not intend to give you any false impression. I do not
12 think I did.
13 Q And you graduated from a common school ?
14 A No sir, I left school and went to work husking corn before
15 it was time to graduate.
16 Q Then afterwards you came back from husking corn and be-
17 came an expert ?
18 A Yes.
19 Q Is that right ?
20 A No, not necessarily. I became a drug clerk next. Long
21 before that also I tried to get in the United States Navy
22 Landing and failed in that, and then I went into the drug
23 store.

1 Q Wait a minute.

2 A All right.

3 Q Did afterwards become an expert ?

4 A I am permitted to qualify as an expert.

5 Q And you as I understand it now spend all your time en-

6 gaged in this work as an expert ?

7 A That is right.

8 Q And a large part of your time,or a considerable portion

9 of your time is spent by giving testimony as an expert

10 in courts ?

11 A A part of my time is spent for that purpose and a part is

12 not.

13 Q A part is given to preparation for your appearance in

14 court ?

15 A Part of it and part of it other purposes.

16 Q You prepared a list of questions for the District-Attorney

17 to ask you upon your examination ?

18 A I wrote out some material for him.

19 Q In the form of questions ?

20 A Yes sir,yes and not.

21 Q So that you are your own interrogator as well as the one

22 who gives the responses ?

23 A No sir,your assertion is incorrect.

1 Q That is not substantially true ?

2 A Your assumption is incorrect.

3 Q How do you go about to determine the presence of lead

4 in a gun barrel ?

5 A Remove a small portion of the lead with either a greasy

6 rag or a preparation for that purpose, then examine the

7 particle under a microscope, and then place it upon a wet

8 crystal.

9 Q I want to get whether it was necessary to remove it from

10 the gun barrel in order to do it and you have indicated

11 it would be necessary ?

12 A I am stating a proper way to do it.

13 Q You contain in your answer a statement it would be nec-

14 essary to remove it from the gun barrel with a greasy

15 rag ?

16 A I did not mean to say it was necessary to do that. I am

17 stating that I would do.

18 Q Could you prove it without removing it ?

19 A In some cases yes, others no.

20 Q Could you in the case of this gun ?

21 A I have not even determined that. I do not know until I

22 re-examine it.

23 Q This condition, Mr. Gaillard, that you speak of that you

found in this barrel of this gun is as I understand it a condition of either accumulation or process of rust, or something of that sort, is that right ?

A That is right.

Q If we - because this gun were fired once wouldn't that situation be immediately altered and the alteration extend to every successive shot than if they were fired within a few minutes, so that the condition that you found in the gun after the fourth shot was fired would be a different condition than you would find in the gun after the first, second or third shot was fired ?

A In point of powder residue deposit it would be altered with every successive shot.

Q That is all ?

A That is not quite an answer.

A And the marks on the bullets if they were caused by any condition of the gun would consequently be different each time ?

A Yes because of the powder chamber deposit.

Q But if the chamber deposit had given a rusty deposit, a rusting process ? The rusting process the situation or condition due to rust there would be altered ?

A It would after the discharge of gun---there is rust, two or

1 three or four years apart the answer would be yes,but when
2 we have a succession of shots in a few seconds or minutes
3 they would be alike.
4 Q You will make the statement,will you,that successive shots
5 will not alter the condition with reference to removing
6 rust,if they are immediately successive ?
7 A Some guns that would be true,others it would not be true.
8 Q This whole matter is a matter of speculation,is it not?
9 A You see it. I can demonstrate it by firing some for you
10 before the jury that what I say is correct.
11 MR. WALTH:-Do not fire in my range,please.
12 I think that is all. So I understand Mr. Sullivan
13 will be with us again ?
14 MR. [illegible]:-I think I stated I may want to
15 recall him.
16 MR. WHITE:-I would like to reserve the right to
17 cross-examine him somewhat further.
18 MR. [illegible]:-I reserve the right to recall
19 him also. You need not worry.
20 THE COURT:-If you have a short witness that you
21 want to get out of the way we can hear it.
22 MR. [illegible]:-Not on this subject.
23

Proceeding of July 11th, 1913.

ROBERT H. HAMILTON, recalled for the People.

CROSS EXAMINATION BY MR. KULCHEROCK:-

Q Mr. Hamilton, you were asked on cross-examination if the markings on these four bullets in evidence, or the projections that you have described on the four bullets, as being on the four bullets ?

A Yes.

Q Could not or might not have been caused by passing through bone and flesh, and my recollection of your answer is that they could not all have been so caused ? Was that your answer ?

THE COURT:-That was not all his answer. He said all of them could not have been so caused, from which I inferred that you meant some of them could have been caused and some could not have been so caused? Is that what you say now ?

A That is not the interpretation of what I believe I said. That is not my interpretation.

THE COURT:-

Q You said they all could not have been caused by striking the bone and flesh of the body ?

A When I said all I meant all the markings on the ballot and those nine that I have referred to. Those there could have been made by striking both.

Q You so testified on Saturday ?

MR. [illegible]: -([illegible])

Q What do you say as to the nine markings on these four ballots in evidence ?

THE COURT:-I think it is wholly unnecessary to repeat because we will never get to an end if we do that. He has already testified these marks could not have been in his judgment caused by striking the bones or the flesh.

Q And will you state to the jury the reasons for that, why they could not have been caused, the marks could not have been caused by striking bones and flesh ?

A I can state, yes sir.

MR. SMITH:-That is objected to as incompetent, irrelevant and immaterial. We have been over it.

THE COURT:-It is opening up the whole thing again. I do not know that it is necessary to do that. I cannot see why it is necessary to go into such minute detail with regard to this. However, I will let him answer the question.

1 M. WHITE:-Excepted.

2 Q. What are the reasons ?

3 A. When the bullets strike bone there is a glancing and

4 carving injury upon the bullet because there is nothing

5 to hold the bullet in a fixed locality. When a marking

6 is made upon a bullet while it is held by the rifling the

7 bullet is firmly held, and any markings made by the mouth

8 of the gun are firmly fixed because the bullet is held as

9 if in a vise by the five lands and grooves, and those nine

10 imperfections are apparently straight and in my opinion

11 made while the bullet was in transit, held firmly by the

12 lands and grooves, and not made while striking and deflect-

13 ing from bone, cartilage or flesh.

14 MR. WHITE:-I ask to have the answer stricken out

15 on the ground it is incompetent, irrelevant and

16 immaterial and purely speculative, and not the sub-

17 ject of expert testimony.

18 Motion denied. Defendant except.

19 MR. FRIEDENSOHN:-That is all.

20 WITNESS:-There is one answer that I gave Saturday that I

21 think was incorrect. May I correct it at this time ?

22 THE COURT:-If you will state the question and the

23 answer, yes.

A I think I was asked by one of the attorneys if when I photographed the side of the four bullets I photographed the side having the imperfections and I stated I thought not. I find that I am in error about that, and that on page 3 the side of the bullet standing upright I have photographed the imperfections that I have described as they appear upon the top of the land and groove.

MR. [illegible]:-

Exhibit [illegible] ?

A "II", only the print is little dark. They can be seen in this book "II", those dark crosses extending up and down, four of them on that land and groove in the middle of the upright picture, and my answer was incorrect when I said I had not photographed them because I find I have.

Q You mean by that that you did not discover that on that greatly enlarged photograph Saturday ?

A I did not until this morning. I did not discover it until this morning.

MR. [illegible]:-[illegible]

Q On that photograph where is indicated the one you speak of as being on the point between the land and the groove

A On the right edge of this land at the bottom and the groove. The groove at the right and the land in the front and middle of the picture, there are two lands and grooves.

1 and the same on the ninth, or the largest injury is that
2 dark line appearing right there little to the right of
3 the centre of the bullet as appearing on page 5.
4 Q. That dark impression ?
5 A. That dark impression just to the right of the light
6 shading.
7 Q. The other eight imperfections appearing on the bullet are
8 where ?
9 A. No, the other five four of them are visible on the top of
10 this land. Four of them are along the bottom of that
11 groove. That is slightly out of focus when this enlargement
12 was taken. I said on the one is the dark heaviest line
13 appearing in the centre between the land and the groove.
14 On this enlargement all of that curving surface cannot
15 be brought into perfect focus on account of it being in
16 enlargement.
17 MR. WITTE:-I ask to have his answer stricken out
18 on the ground it is irrelevant and incompetent
19 and immaterial. And on the further ground the
20 photograph speaks for itself. And the further ground
21 such things as the witness has just stated did
22 not get in this photograph.
23 THE COURT:-Motion denied.

MR. WHITE:-Exception.

Q You made the photograph yourself ?

A I did.

Q You made all the photographs yourself ?

A I did.

Q And enlarged them ?

A I did.

THE COURT:-That is the occasion for that ? You could not have asked him anything about that until you had shown that he did make them and did enlarge them. He told us he did everything.

Q They are correct photographs of these bullets ?

A They are.

THE COURT:-He has already also testified to that. Let us not have any more repetition, particularly with regard to expert evidence. We must get on. The case ought to be completed in a reasonable time.

MR. WHITE:-Do I understand Mr. Hamilton is to be here and that I may examine him further at some other time ?

THE COURT:-You have had time to prepare to cross-examine him. I do not see any occasion for keeping

him here any longer. I do not know but the people intend to have him here when your side of the case is opened. That is another proposition. If they do not want to keep him here then I think we may as well finish with him.

MR. KNICKERBOCKER:-Probably Mr. Hamilton will be here. We do not want to agree to that because he may have to go.

THE COURT:-Is he going to be here today ?

MR. BLACK:-He expects to be here all of today. We are willing Mr. White should cross-examine him further at any other time.

1 A L B E R T H. H A M I L T O N, recalled and further cross-
2 examined by Mr. White:-
3 Q Mr. Hamilton, when you were with us before you as I recall
4 testified that you made a test of something that you got
5 from this exhibit"20", and that you determined that it was
6 blood ?
7 A Right.
8 Q You did not determine that it was human blood ?
9 A I did not make that test.
10 MR. WHITE:-That is all on that subject.
11 (Witness shown paper)
12 Q Is that your photograph ?
13 A That is a cut of my photograph many years ago.
14 Q What do you mean by a cut of your photograph ? You mean
15 that you did not pose for this particular picture ?
16 A No, it is not a photograph. That is a cut of a photograph
17 that was taken I think about twenty years ago.
18 Q A photograph was taken and then they make some kind of
19 a plate from which they can print these reproductions of
20 the photograph ?
21 A Right.
22 Q This pamphlet that I hold in my hand, entitled"Thos Cum
23 from Auburn", is that you ?

1 A That is in the pamphlet.

2 Q Can't you answer my question?

3 A May I have that question read, please?

4 (Question read by the stenographer)

5 Q Are you the man from Auburn I mean?

6 A That is my home.

7 Q I show you this pamphlet, Mr. Hamilton.

8 A Oh, it is in quotation.

9 Q I did not ask you to make any comments.

10 A What is the question?

11 Q I will ask it presently. Did you ever see one of these

12 before?

13 A I have many times.

14 Q I did not ask you how many times. Let me take it, please.

15 Did you have to do with compiling the contents of that

16 pamphlet and the editing of it?

17 A I had that pamphlet printed many years ago. The contents

18 is compiled by newspaper reporters.

19 Q I asked you "compiled". You understand what compiling

20 the contents of a pamphlet means?

21 A I am not sure what your construction is.

22 Q I mean collecting the contents and getting them in shape

23 to be delivered over to be printed or published?

24 A That is true, yes.

1 Q You did that ?

2 A That is true. I thought you meant making the contents.

3 Q No,I did not mean that. You thought I meant that ?

4 A I did not know but what you might have meant that.

5 Q I show you page 3 and also page 4,and are you responsible

6 for the insertion of the matter printed on those pages?

7 A Oh,I should say so,and page 6.

8 Q I did not ask you about page 5.

9 A Page 5 is rarely referred to in cross-examination.

10 Q We may refer to it here just to break the monotony.

11 Page 3 reads,headed:"That man from Auburn". "He quali-

12 fies as an expert witness upon the following subjects:

13 Chemistry,microscopy,handwriting,hair analysis,typewriting,

14 photography,finger prints,toxicology,gun-shot wounds,

15 revolvers,guns and cartridges,bullet identification,gun

16 powder,nitro-glycerine,dynamite,high explosives,blood and

17 other stains,(human &c.)cause of death,)suicide vs.

18 homicide) exploding bulbs,determination of distance

19 a revolver was held when discharged,whether a given bullet

20 was fired from a given revolver,embalming and several

21 other subjects. Skilled observer at autopsies and scientif-

22 ic theorist. He is the man from Auburn and appears to

23 compelling presenting witnesses to confirm their testimony

1 strictly to the facts"?

2 A That is very true.

3 Q I did not ask you whether it is true or not. "He assists

4 by a chemical and microscopical examination of the ex-

5 hibits in discovering the true theory of the case. He

6 assists in detecting the fallacies that may exist in court

7 exhibits and photographs". Can you do all that ?

8 A I think I can. You might try me and see.

9 Q Mr. Hamilton,I want to show you two sheets from a magazine.

10 A This is something new. I never saw this before.

11 Q You will get acquainted with it as I go along.

12 A Go ahead.

13 Q You see it appears to be the"Popular Magazine"?

14 A I see it is two pieces of paper.

15 Q "Popular Magazine"is printed across there ?

16 A No,they look like proof sheets to me.

17 Q "Popular Magazine"is printed across there ?

18 A This looks like proof sheets in the magazine paper.

19 Q I want to ask you if you know anything about the authorship

of this: "He is give a picture of one such flimflam

20 expert and his box of tricks. His name is---

21 A Pardon me for smiling because I have heard that before.

22 Q "His name is Albert E. Hamilton and he calls himself

23

'That Man from Auburn". He claims spiritual kinship with Sherlock Holmes,and a facial resemblance. He says that he qualifies as an expert witness in twenty-three subjects, of which finger prints,gun-shot wounds,blood stains and embalming fluids are only a few of the cheerier items. He claims to be a good man to have around during the last sad rites for,says he,he is a'skilled observer at autopsies'. Sant you see him,with that salient profile of his, peering at the silent central figure of the ceremony ? Or he releases the fumes of hydro-chloric acid upon a sheet of paper,and with a tooth pick deduces the age of the handwriting. He trumps with certitude in trigonometry.

But not only is he a mystery monger,he is also a miracle worker. In odd moments when he is resting up from his plunge into the fog he sells to aging persons 'Hamilton's Cream Hair Balsam'. 'This restores the original beautiful color'. It'restores to gray hair a natural color in fifteen to thirty days'. And he sells pills which he calls'Cleopatra's Secret'--not a potent medicine, but the personification of a woman--a lady's rumply,a queen's secret,about his knowledge brain break the waves of empty speculation. He finally at dinner read some of the things

to which he has testified and a laugh and a snoor run around the table.

'There is your handwriting expert for you' says Dad with a snicker. 'They are all alike', those follows- their head in the clouds dreaming. 'Just listen to this story', and then father reads how Al Hamilton told about a piece of handwriting that a man wrote with 'a pen, one nib of which was broken on a corrugated book'.

Some quiet household in Watertown lift the morning paper from the doorstep and bring it in to the assembled breakfasters.

'Listen, brother', says Sister Grace. 'This beats the stuff you are so keen about in Conan Doyle. Here this man Hamilton of Auburn can tell who the incendiary was who burned the Paddock House. And how do you think he guesses it ? He examines the dirt under the finger nails of the suspected Italian and finds traces of horseshoe'.

'Or round the quiet glow of the evening lamp in Tom, Uncle Ashley lines out the 'Tennant case', in which Hamilton testifies about an agreement forty-seven years old. He said that the agreement and the three signatures attached to it had all been written by the same person and that that person was a woman. Wonder-working man to

turned his way backward through the dark of half a century, and, with the eye of vision, see the moving finger write.

Among his famous flash judgments where men of finer sensibility acknowledge ignorance are those that follow. They sound like echoes of Poe. He identified a safe blower by eight stereoscopic ridges on a cake of soap which he claimed were imprints of lines on the suspect's thumb in the Burbank Case. He testified that a man had written certain letters with his left hand and other letters with his right, though the writer in nineteen of the alleged right-handed letters apologized for writing with his left, stating that his right was disabled by rheumatism. One of his rapid-fire decisions relate to the arrest of an Italian boy on an accusation of murder. The lad languished in jail for several weeks. Al Hamilton had reported that the bullet which killed the night-watchman had been fired from the particular revolver found in the boy's house. Then finally the boy was able to establish a complete alibi and was discharged". Did you write that ?

A I did not. I am tell you all about that though.

MR. WHITE:-I did not ask you that.

MR. [illegible]:-I move to strike out that he has read from that pamphlet. It does not appear the witness had anything to do with it.

THE COURT:-Go,let it stand.

A I can tell why that was written.

MR. SMITH:-I object to the witness making any statement.

THE COURT:-Nothing is asked,of course. The Court is making its decision. I suppose that is permissible?

CONTINUED EXAMINATION BY MR. FRANKENHEIM:-

Q What is there about this long article he has read ? Do you know anything about it ?

MR. SMITH:-That is objected to as incompetent, irrelevant and immaterial.

Objection overruled.

Sufficient answer.

A This article here is part of an article that was written by I think a man by the name of Gleason as an advertisement for two New York City handwriting experts,one of them I detected in falsifying a court exhibit,which is now a Court of Appeals case,known as Drum vs. Howell in Ogdensburg,whereby in the passing of an ink in a court exhibit fraudulent testimony---

MR. SMITH:-I object to this as incompetent,immate-

vid, involvement, and I ask to have it straight out.

THE COURT:-We are having a lot of talk about nothing. Somebody wrote an article about Mr. Hamilton. That does not prove anything about Mr. Hamilton except that a man wrote an article about him. That is all. What is there to it ? Mr. Hamilton's explanation of it, if we take any part of it we should take it all, of course. You have not the article itself ? Somebody might write an article about Mr. White, and I presume they have, that does not prove anything except that somebody wrote an article about him.

MR. WHITE:-No, I merely asked Mr. Hamilton if he wrote that himself.

THE COURT:-Did you think he did ?

MR. WHITE:-I did not think so, and he said he did not.

THE COURT:-Straighten it all out. We will hear on and off it. We will now adjourn until tomorrow morning at half past nine.

A L B E R T S. W I L L I S, recalled for the People.

Mr. Hamilton, I show you these shoes, Peoples' exhibit "QQ". Where did you see these shoes ?

A May 24, 1915, at the sheriff's office. That is, the room over the sheriff's office.

Q And did you make an examination of them to determine whether there were any blood spots on them anywhere ?

A I did.

Q You may take this off. State what examination you made of them and what you discovered about them ?

MR. WILLIS:-That is objected to as incompetent, irrelevant and immaterial.

THE COURT:-Objection overruled. This is the ruling upon which I sustain the objection: This alleged murder took place on the 31st of March. The shoes were taken from Stielow's house when ? The latter part of April or the first part of May, and it does not appear by any evidence what happened to the shoes and where they had been in the intervening time; that we think the shoes are now in the same condition they were on the morning of March 31st

we will say is not established.

MR. KNICKERBOCKER:-It seems to me that is a matter to be accounted for by the defendant.

THE COURT:-No. You have to show, where the time has elapsed, that the article examined is presumptively in the same condition. To be sure, if the witness were going to identify marks on there as being stains of human blood, I can see there is a possibility of eliminating any other explanation, of course. But where he is only going to, as I understand that is as far as he is going to say, there may be something he identifies as blood, it must appear very satisfactory before the evidence is offered that there was no intervening opportunity, or preceding opportunity for that matter, to get blood on them.

MR. KNICKERBOCKER:-We cannot account for how blood got on there, if there is blood.

THE COURT:-No, of course not.

MR. KNICKERBOCKER:-That is all.

MR. WHITE:-No questions.

State of New York, :
City of Buffalo, : ss
County of Erie. :

M a r k F. B e n s l e y, being duly sworn, deposes and says: That he is now, and has been since September 14th, 1909, one of the Official Stenographers of the Supreme Court, Eighth Judicial District of the State of New York; that he attended the trial of The People of the State of New York against Charles Frederick Stielow, indicted for murder in the first degree, heard before Hon. Cuthbert W. Pound, Justice, and a jury, at Albion, Orleans County, New York, beginning July 12th, 1915, and took stenographic notes of the proceedings and testimony given upon said trial; that Albert H. Hamilton was sworn as a witness on behalf of the People and gave evidence upon said trial, which was accurately and correctly taken in shorthand by deponent, and that the foregoing is a true and accurate transcript of the testimony so given by said Albert H. Hamilton upon said trial, and the whole thereof.

Mark F. Bensley

Subscribed and sworn to before me this 20th day of April, 1923.

C. J. Irvin
Notary Public in and for
Erie County, New York.